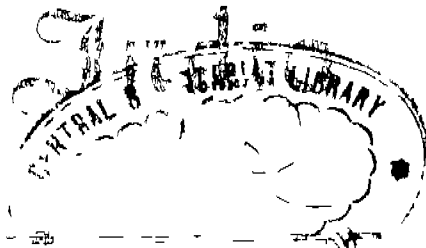


भारत का राजपत्र The Gazette of India

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सं. 34]
No. 34]

नई दिल्ली, शनिवार, अगस्त 25, 2001/भाद्र 3, 1923
NEW DELHI, SATURDAY, AUGUST 25, 2001/BHADRA 3, 1923

इस भाग में निम्न पृष्ठ संख्या दी गयी है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate binding is given to this Part in order that it may be fit as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय की छोड़कर) द्वारा जारी किए गए अधिनियमों और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

वित्त मंत्रालय
(राजस्व विभाग)

केन्द्रीय उत्पाद शुल्क अधिनियम का कार्यालय

मदुरै 2 अगस्त, 2001

सं 04/2001-सीमा शुल्क (एन टी)

का आ 2139.— सीमा शुल्क अधिनियम, 1962 धारा 9
जो भारत सरकार वित्त मंत्रालय, राजस्व विभाग नई दिल्ली
के अधिसूचना सं 33/94-सीमा शुल्क (एन टी) दिनांक
1-7-94 के साथ पठित द्वारा प्रदत्त शक्तियों का प्रयोग
करते हुये मैं एतद्वारा तिरुवनमलपुरम राज्य के तिरुनेलवेली
जिला, राधापुरम तालुका के "तिरुवम्बालपुरम" गांव को
सीमा शुल्क अधिनियम, 1962 (1962 का 52) के
अधीन शत प्रतिशत निर्यातोन्मुख उपकरण स्थापित
करने हेतु भांडार घोषित करता हूँ।

[फाईल सी सं -IV/16/75/2001-टी-2]

एन शशिधरन, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

OFFICE OF THE COMMISSIONER OF
CENTRAL EXCISE

Madurai, the 2nd August, 2001

No 04/2001-Customs (N.T.)

S.O. 2139—In exercise of the powers
conferred on me under section 9 of the Cus-
toms Act, 1962 (52 of 1962) read with Noti-
fication No 33/94 Customs (NT) dated
1-7-94 of the Government of India, Ministry
of Finance, Department of Revenue, New
Delhi, I hereby declare Thiruvambalapuram
Village, Radhaipuram Taluk, Tirunelveli Dis-
trict in the State of Tamil Nadu to be a
warehousing station under the Customs Act
1962 (52 of 1962) for the purpose of setting

up of 100 per cent Export Oriented Undertakings.

[File C. No. IV/16/75/2001-T.2]
N. SASIDHARAN, Commissioner

मदुरै, 8 अगस्त, 2001

सं. 05/2001-सीमा शुल्क (एन.टी.)

का.आ. 2140.—सीमा शुल्क अधिनियम, 1962 की धारा 9 जो भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के अधिसूचना सं. 33/94-सीमा शुल्क (एन.टी.) दिनांक 1-7-94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये मैं एतद्वारा तमिलनाडू राज्य के तिरुनेल्वेली जिला, राधापुरम तालूका के "कुम्बिकुलम" गांव को सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता हूं।

[फाइल सी.सं. IV/16/95/2001-टी 2]

एन. शशिधरन, आयुक्त

Madurai, the 8th August, 2001

No. 05/2001-Customs (N.T.)

S.O. 2140.—In exercise of the powers conferred on me under section 9 of the Customs Act, 1962 (52 of 1962) read with Notification No. 33/94-Customs (NT) dated 1-7-94 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare Kumbikulam Village, Radhapuram Taluk, Tirunelveli District in the State of Tamil Nadu to be a warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up of 100 per cent Export Oriented Undertakings.

[File C. No. IV/16/95/2001-T.2]
N. SASIDHARAN, Commissioner

मदुरै, 8 अगस्त, 2001

सं. 06/2001-सीमा शुल्क (एन.टी.)

का.आ. 2141.—सीमा शुल्क अधिनियम, 1962 की धारा 9 जो भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के अधिसूचना सं. 33/94-सीमा शुल्क (एन.टी.) दिनांक 1-7-94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये मैं एतद्वारा तमिलनाडू राज्य के कन्याकुमारी जिला, अगस्थीस्वaram तालूका के "तामरैकुलम" गांव को सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता हूं।

[फाइल सी.सं. IV/16/99-2001-टी.-2]

एन. शशिधरन, आयुक्त

Madurai, the 8th August, 2001

No. 06/2001-Customs (NT)

S.O. 2141.—In exercise of the powers conferred on me under section 9 of the Customs Act, 1962 (52 of 1962) read with Notification No. 33/94-Customs (NT) dated 1-7-94, of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare Thamaraiikulam Village, Agastheeswaram Taluk, Kanyakumari District in the State of Tamil Nadu to be a warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up for 100 per cent Export Oriented Undertakings.

[File C. No. IV/16/95/2001-T.2]

N. SASIDHARAN, Commissioner

मदुरै, 8 अगस्त, 2001

सं. 07/2001-सीमा शुल्क (एन.टी.)

का.आ. 2142.—सीमा शुल्क अधिनियम, 1962 की धारा 9 जो भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली, के अधिसूचना सं. 33/94-सीमा शुल्क (एन.टी.) दिनांक 1-7-94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये मैं एतद्वारा तमिलनाडू राज्य के मदुरै जिला, तिरुमंगलम तालूका के "उच्चपट्टी" गांव को सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता हूं।

[फाइल सी.सं.-IV/16/97/2001-टी.-2]

एन. शशिधरन, आयुक्त

Madurai, the 8th August, 2001

No. 07/2001-Customs (N.T.)

S.O. 2142.—In exercise of the powers conferred on me under section 9 of the Customs Act, 1962 (52 of 1962) read with Notification No. 33/94-Customs (NT) dated 1-7-94 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare Uchapatti Village, Thirumangalam Taluk, Madurai District in the State of Tamil Nadu to be a warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up of 100 per cent Export Oriented Undertakings.

[File C. No. IV/16/97/2001-T.2]

N. SASIDHARAN, Commissioner

मदुरै, 8 अगस्त, 2001

सं. 8/2001-सीमा शुल्क (एन.टी.)

का.आ. 2143.—सीमा शुल्क अधिनियम, 1962 की धारा 9 जो भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली की अधिसूचना सं. 33/94-सीमा शुल्क (एन.टी.) दिनांक 1/7/94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये मैं एतद्वारा तमिलनाडू राज्य के तूतुकुडी जिला, श्रीवैकुण्ठम तालूका के "कीलवलनाडु" गांव को सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता हूँ।

[फाईल सी.सं IV/16/98/2001-टी.-2]

एन. शशिधरन, आयुक्त

Madurai, the 8th August, 2001

No. 8/2001-Customs (N.T.)

S.O. 2143.—In exercise of the powers conferred on me under section 9 of the Customs Act, 1962 (52 of 1962) read with Notification No. 33/94-Customs (NT) dated 1-7-94 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare Kcelavallanadu Village, Srivaikundam Taluk, Tuticorin District in the State of Tamil Nadu to be a warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up of 100 per cent Export Oriented Undertakings.

[File C. No. IV/16/98/2001-T.2]

N. SASIDHARAN, Commissioner

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2144 — भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (ड) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये केन्द्रीय सरकार, एतद्वारा वित्त मंत्रालय, आर्थिक कार्य विभाग, (बैंकिंग प्रभाग), नई दिल्ली के अपर सचिव (वित्तीय क्षेत्र) श्री एस.के. पुरकायस्थ, आई ए एस (एम 69) को तत्काल प्रभाव से और अगले आदेश होने तक भारतीय स्टेट बैंक के केन्द्रीय बोर्ड में निदेशक के रूप में नामित करती है।

[फा.सं. 9/8/2000-बी.ओ.-1(i)]

रमेश चन्द, अपर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 1st August, 2001

S.O. 2144.—In exercise of the powers conferred by clause (e) of Section 19 of the State Bank of India, Act, 1955 (23 of 1955), the Central Government, hereby nominates Shri S. K. Purkayastha, IAS (AM:69), Additional Secretary (Financial Sector) Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi as a director on the Central Board of State Bank of India with immediate effect and until further orders.

[F. No. 9/8/2000-B.O.I.(i)]

RAMESH CHAND, Under Secy.

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2145.—भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, केन्द्रीय सरकार, एतद्वारा वित्त मंत्रालय, आर्थिक कार्य विभाग, (बैंकिंग प्रभाग), नई दिल्ली के अपर सचिव (वित्तीय क्षेत्र) श्री एस.के. पुरकायस्थ, आई ए एस (एम 69) को तत्काल प्रभाव से और अगले आदेश होने तक भारतीय औद्योगिक विकास बैंक के निदेशक बोर्ड में निदेशक के रूप में नामित करती है।

[फा.सं. 9/8/2000-बी.ओ.-I(ii)]

रमेश चन्द, अपर सचिव

New Delhi, the 1st August, 2001

S.O. 2145.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 6 of the Industrial Development Bank of India Act, 1964 (18 of 1964), the Central Government, hereby nominates Shri S. K. Purkayastha, IAS (AM:69), Additional Secretary (Financial Sector), Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi as a director on the Board of Directors of Industrial Development Bank of India with immediate effect and until further orders.

[F. No. 9/8/2000-B.O.I.(ii)]

RAMESH CHAND, Under Secy.

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2146.—राष्ट्रीय कृषि और ग्रामीण विकास बैंक अधिनियम, 1981 (1981 का 61) की धारा 6 की उपधारा (1) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का

प्रयोग करते हुये, केन्द्रीय सरकार, एतद्द्वारा, वित्त मंत्रालय, आर्थिक कार्य विभाग, (बैंकिंग प्रभाग), नई दिल्ली के अपर सचिव (वित्तोप क्षेत्र) श्री एस. के. पुरकायस्थ, आई ए एस (एम 69) को तत्काल प्रभाव से और अगले आदेश होने तक राष्ट्रीय कृषि और ग्रामीण विकास बैंक का निदेशक नियुक्त करती है।

[फा.सं. 9/8/2000-बी.ओ.-I(iii)]
रमेश चन्द, अपर सचिव

New Delhi, the 1st August, 2001

S.O. 2146.—In exercise of the powers conferred by clause (d) of sub-section (1) of Section 6 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government, hereby nominates Shri S. K. Purkayastha, IAS (AM:69), Additional Secretary (Financial Sector), Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi as a director on the Board of Directors of National Bank for Agriculture and Rural Development with immediate effect and until further orders.

[F. No. 9/8/2000-B.O.I.(iii)]
RAMESH CHAND, Under Secy.
(बीमा प्रभाग)

नई दिल्ली, 17 अगस्त, 2001

का.आ. 2147.—केन्द्रीय सरकार, भारतीय जीवन बीमा निगम अधिनियम 1956 (31 का 1956) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री एस. के. पुरकायस्थ, अपर सचिव, आर्थिक कार्य विभाग, वित्त मंत्रालय को डा. आदर्श किशोर के स्थान पर उक्त निगम के अंश-कालिक सदस्य के रूप में तत्काल प्रभाव से अग्रिम आदेश तक के लिए नियुक्त करती है।

[फा. सं 15(6)/2001-बीमा-5]
जी. भुजबल, निदेशक

(Insurance Division)

New Delhi, the 17th August, 2001

S.O. 2147.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Sh. S. K. Purkayastha, Additional Secretary (Financial Sector), Department of Economic Affairs, Ministry of Finance as Member on the board of Life Insurance Corporation of India with immediate effect till further orders, vide Dr. Adarsh Kishore.

[F. No. 15/6/2001-Ins. V]
G. BHUJABAL, Director

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 6 अगस्त, 2001

का.आ. 2148.—निर्मात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, मैसर्स थेराप्यूटिक्स कैमिकल्स रिसर्च कार्पोरेशन को जो कि केएचबी कोलोनी, तिलक नगर, कैंटोमेंट, बेल्लारी-583104 को जिनका रजिस्ट्रीकृत कार्यालय शिव इंडस्ट्रियल इस्टेट, दूसरा तल, क्रान्ति वीराभाई, बाल मुकुन्द रोड, बायकुला गुड्स डिपो के पास, बम्बई-400-012 को वाणिज्य मंत्रालय की अधिसूचना 3975 तारीख 20 दिसम्बर 1965 के साथ संलग्न अनुसूची के अनुसार खनिज तथा अयस्क (ग्रुप-I) अर्थात् कच्चे लोहे के निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के प्रकाशन की तारीख से तीन वर्षों की अवधि के लिए एक अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात् :—

- (i) मैसर्स थेराप्यूटिक्स कैमिकल्स रिसर्च कार्पोरेशन, बेल्लारी, निर्यात निरीक्षण परिषद् द्वारा इस संबंध में नामित अधिकारी को अपने द्वारा अपनाई गयी निरीक्षण पद्धति की जांच करने के लिए पर्याप्त सुविधाएं देगी ताकि खनिज तथा अयस्क (ग्रुप-I) अर्थात् कच्चे लोहे के निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अंतर्गत निरीक्षण का प्रमाण पत्र दिया जा सके।
- (ii) मैसर्स थेराप्यूटिक्स कैमिकल्स रिसर्च कार्पोरेशन बेल्लारी इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निर्देशों द्वारा आखड़ होगी जो निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण) समय-समय पर लिखित रूप में दें।

[फा.सं. 5/13/2001-ई.आई.एण्ड ई.पी.]

राज सिंह, उप सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 6th August, 2001

S.O. 2148.—In exercise of the powers conferred by the Sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a period of three years from the date of publication of this notification, M/s Therapeutics Chemical Research Corporation located at KHB Colony, Thilak Nagar, Cantonment, Bellary-583104 and having their registered office at Shiv Industrial Estate, 2nd Floor, Kranti Veerabhai, Bal Mukand Road, Near Byculla Goods Depot, Bombay 400 012 as an Agency for the inspection of minerals and ores (Group-I) namely Iron Ore, specified in the Schedule annexed to the Ministry of Commerce Notification 3975 dated 20th December 1965, prior to export subject to the following conditions, namely :—

- (i) that M/s. Therapeutics Chemical Research Corporation, Bellary shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of

Inspection followed by them in granting the certificate of inspection under Rule 4 of the Export of Minerals and Ores (Group I) (Inspection), Rules, 1965 ;

- (ii) that M/s. Therapeutics Chemical Research Corporation, Bellary in the performance of their function under this notification shall be bound by such directives as the Director (Inspection and Quality Control) may give in writing from time to time.

[File No. 5/13/2001-EI&EP]
RAJ SINGH, Dy. Secy.

मानव संसाधन विकास मंत्रालय
(माध्यमिक तथा उच्चतर शिक्षा विभाग)

नई दिल्ली, 3 अगस्त, 2001

का.भा. 2149.—केन्द्रीय सरकार राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप-नियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय (माध्यमिक तथा उच्चतर शिक्षा विभाग) के अन्तर्गत निम्नलिखित 13 केन्द्रीय विद्यालयों को, जिनमें 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :

1. केन्द्रीय विद्यालय नं. 1,
अखनूर,
जिला-जम्मू-181201
2. केन्द्रीय विद्यालय नं. 2,
पठानकोट,
सैन्य क्षेत्र-145001
3. केन्द्रीय विद्यालय नं. 3,
अमृतसर नारायणगढ़,
नई छावनी, अमृतसर-143006
4. केन्द्रीय विद्यालय,
योम कैंट,
जिला-कांगड़ा-176052
5. केन्द्रीय विद्यालय नं. 2,
अखनूर टंकी नं. 4,
टोडा कॉम्प्लेक्स-181201
6. केन्द्रीय विद्यालय नं. 1,
श्रीनगर, बदामी बाग छावनी,
बटवारा-190004
7. केन्द्रीय विद्यालय,
डी.वी.एन.
गुरदासपुर-143530
8. केन्द्रीय विद्यालय,
नंगलसूर,
जिला-गुरदासपुर-14510
9. केन्द्रीय विद्यालय,
भाला, नहर्सा जिला-गुरदासपुर,
जिला-कांगड़ा।

10. केन्द्रीय विद्यालय,
संजुवा (कालूचक)-180010
11. केन्द्रीय विद्यालय,
जमुना कोलरी,
शाहडोल (म. प्र.)
12. केन्द्रीय विद्यालय,
एन.टी.पी.सी. जमनीपाली,
कोरबा (छत्तीसगढ़)-495450
13. केन्द्रीय विद्यालय नं. 1,
भुसावल आयुध निमाणी,
आवासीय क्षेत्र, भुसावल-425203

[सं. 11011-9/2001-रा.भा. ए.]
डी. पी. बन्वनी, निदेशक (रा.भा.)

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Sec. & Higher Education)

New Delhi, the 3rd August, 2001

S.O. 2149.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Govt. hereby notifies following 13 Kendriya Vidyalayas under the Ministry of Human Resource Development (Deptt. of Sec. & Higher Education) more than 80% Staff of which has acquired working knowledge of Hindi :-

1. Kendriya Vidyalaya No. 1,
Akhnoor,
Distt. Jammu—181 201.
2. Kendriya Vidyalaya No. 2,
Pathankot,
Army Area—145 001.
3. Kendriya Vidyalaya No. 3,
Amritsar, Narayanagarh,
New Cantt.,
Amritsar—143 006.
4. Kendriya Vidyalaya,
Yol Cantt.,
Distt. Kangra—176 052.
5. Kendriya Vidyalaya No. 2,
Akhnoor Tanki No. 4,
Toda Complex—181 201.
6. Kendriya Vidyalaya No. 1,
Shrinagar,
Badami Bagh Cantt.,
Batwara—190 004.
7. Kendriya Vidyalaya,
D.V.N.,
Gurdaspur—143 530.

8. Kendriya Vidyalaya,
Nungalsur,
Distt. Gurudaspur—145 101.

9. Kendriya Vidyalaya,
Bhanala,
Area Shahpur,
Distt. Kangra.

10. Kendriya Vidyalaya,
Sanjuwa,
(Kaluchak)—180 010.

11. Kendriya Vidyalaya,
Jamuna Colliery,
Distt. Shahdol (M.P.).

12. Kendriya Vidyalaya,
N.T.P.C. Jamnipali,
Distt. Korba (Chhattisgarh).

13. Kendriya Vidyalaya No. 1,
Bhusawal Ordnance Factory Residential
Area,
Bhusawal—425 203.

[No. 11011-9/2001-O.L.U]

D. P. BANDOONI, Director (O.L.)

पोत परिवहन मंत्रालय

(नौवहन पक्ष)

नई दिल्ली, 14 अगस्त, 2001

का.प्रा.: 2150—शीपघरो के लिए केन्द्रीय सलाहकार समिति (प्रतिक्रियात्मक) नियमावली 1976 के नियम 4 के साथ पठित शीपघर अधिनियम, 1927 (1927 का 17) की धारा 4 की उपधारा (1) के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार, पोत परिवहन मंत्रालय (नौवहन पक्ष) की अधिसूचना सं. एलएच-11016/3/2000-एसएस दिनांक 22 मार्च, 2001 में निम्नलिखित संशोधन करती है :—

22 मार्च, 2001 की उक्त अधिसूचना में क्रम सं. 11 एवं 15 के स्थान पर निम्नलिखित प्रविष्टियाँ प्रतिस्थापित की जाएंगी, अर्थात् :—

- | | |
|----------------------------------|----------------------|
| 11. कैप्टन जे.एस. गिल | मास्टर्स मैरीनर्स आफ |
| कंपनी आफ मास्टर्स मैरीनर्स | इंडिया के प्रतिनिधि |
| आफ इंडिया, मुम्बई। | |
| 15. कैप्टन सतीश सेठ, | एसएसओसीएचएम |
| जनरल मैनेजर-प्रोजेक्ट्स, | के प्रतिनिधि |
| शाही शिपिंग लि., बड़ौदा स्ट्रीट, | |
| मुम्बई-400009 | |

[फा. सं. एल एच-11016/3/2000-एस एस]

मुंशी राम, अव्वर सचिव

MINISTRY OF SHIPPING

(Shipping Wing)

New Delhi, the 14th August, 2001

S.O. 2150.—In pursuance of Sub-Section (1) of Section 4 of the Lighthouse Act, 1927 (No. 17 of 1927) read with Rule 4 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976, the Central Government hereby makes the following amendments in the Government of India, Ministry of Surface Transport (Shipping Wing's) Notification No. LH-11016/3/2000-SL dated 22nd March, 2001.

In the said notification dated 22nd March, 2001, for the existing entries at S. No. 11 and 15, the following entries shall be substituted, namely :—

- | | |
|---|---|
| (11) Capt. J. S. Gill,
The Co. of Master
Mariners of India,
Mumbai. | Representative
of Company of
Master Mari-
ners of India. |
| (15) Captain Satish Seth,
General Manager—Projects of ASSOCHAM.
Shahi Shipping Ltd.,
Baroda Street,
Mumbai—400 009. | Representative
of ASSOCHAM. |

[F. No. LH-11016/3/2000-SL]

MUNSHI RAM, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 13 जून, 2001

का.प्रा. 2151.—केन्द्र सरकार चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 व 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा-5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का उपयोग करते हुए तथा उक्त विषय पर इस मंत्रालय की पूर्ण अधिसूचना के अधीन में केन्द्रीय फिल्म प्रमाणन बोर्ड के मुम्बई सलाहकार पैनल का पुनर्गठन करनी है और उक्त पैनल के सदस्य के रूप में निम्नलिखित व्यक्तियों को दो वर्ष की अवधि के लिए या अगले आदेशों तक जो भी पहले हो, तत्काल प्रभाव से नियुक्त करती है :—

1. श्री प्रशान्त दम्पल
2. श्री सतीश यू. गुलेकर
3. एडवोकेट आशिष शेलार
4. श्री गजानन आर. धुर्वे
5. श्री महेश कोठारे
6. श्री विनोद पवार
7. श्री अरुण जैन
8. श्री श्रीप्रकाश मेनन
9. श्री मुनील अग्रवाल

- | | |
|---------------------------------------|-------------------------------------|
| 10. श्री राकेश के. उपाध्याय | 53. श्री दशरथ सैयद |
| 11. श्रीमती वैजयंती कुलकर्णी आपटे | 54. श्री बालचन्द्र त्रिवेदी |
| 12. एडवोकेट साहित्य लक्ष्मी देशपाण्डे | 55. सुश्री अलका पाण्डे |
| 13. श्रीमती ज्योति पी. अलवानी | 56. सुश्री अतीमा मनकोटिया |
| 14. सुश्री संगीता एल. पवार | 57. सुश्री हीरू मीरचन्दानी |
| 15. श्रीमती उज्ज्वला मिश्रा | 58. श्रीमती बोनानी दाम गुप्ता |
| 16. श्रीमती हेमलता दीपक | 59. श्री कुन्दन व्यास |
| 17. श्रीमती वसन्ती मजूमदार | 60. डा. अजय कोठारी |
| 18. डा. रूपा पटेल | 61. श्रीमती मोनिका बर्मन |
| 19. श्रीमती बन्दना बीतानकर | 62. श्रीमती पद्मजा फेन्नी जोगलेकर |
| 20. श्रीमती रीता मधवाना | 63. सुश्री प्रतिमा एल. दोषी |
| 21. श्री राजवर्ता | 64. श्रीमती सुभांगी अश्रीत तेंदुलकर |
| 22. श्री विजय बहादुर खन्ना | 65. सुश्री प्रोमिला श्रीवास्तव |
| 23. श्री चारु दत्त आचार्य | 66. श्रीमती उषा मेहता |
| 24. श्री श्रीधर फडके | 67. सुश्री विद्या देगडे |
| 25. श्री शान्ति देव | 68. सुश्री गीता मेनन |
| 26. श्रीमती लै श्री मेमा देवी | 69. सुश्री रीफ अहमद |
| 27. श्री विद्याधर नीमकर | 70. श्री अली रेजा रिजवी |
| 28. श्री सुधीर नन्दगांवकर | 71. श्री जयदेव हटंगडी |
| 29. श्रीमती नीला उपाध्याय | 72. श्री शेखर सेन |
| 30. कैप्टन योगेश दुबे | 73. सुश्री देवयानी खांखोज |
| 31. श्रीमती मर्गेज शर्मा | 74. श्री राम केलकर |
| 32. श्री सबीर निर्बान | 75. श्री सुभाष देमाई |
| 33. श्री वीरेन्द्र राजकिशोर त्रिपाठी | 76. सुश्री नीला उपाध्याय |
| 34. श्री इफ्तिखार खा | 77. श्री हंलार्श मोरार्का |
| 35. श्री विलाम पी. खानोलकर | 78. श्री मनोज दुबे |
| 36. श्री विनय कुमार मिन्हा | 79. श्री नरेन्द्र शर्मा (डा.) |
| 37. श्री ब्रिडलसिंह महीपत सिंह राजपूत | 80. श्री समीर देसाई |
| 38. श्री कसमभाई सारथिया | 81. श्रीमती कोकिना भट्ट |
| 39. श्रीमती शुची एस. हलवासिया | 82. श्रीमती लीना सेन |
| 40. श्री शरद सी. शाह | 83. श्रीमती एम. बाहामरे |
| 41. श्रीमती हेमा ए. शूक्ला | 84. श्रीमती शैला हीरेकर |
| 42. श्री अरुण जोषडी | 85. श्रीमती उषा ठक्कर |
| 43. डा. (श्रीमती) सुमन जैन | 86. श्रीमती विना प्रभु |
| 44. श्री भगत हरगोविन्दर मेहता | 87. श्रीमती विना रामकृष्णा |
| 45. श्रीमती रानी कैलाश पेट्टेदार | 88. सुश्री रेखा हतोलकर |
| 46. श्री भारत खरण्डे | 89. सुश्री संगीता ओहरी |
| 47. डा. (श्रीमती) कीर्तिया रमेश मेहता | 90. श्री एन. एम. अलीमचन्दानी |
| 48. श्री जयेश बी. शाह | |
| 49. श्रीमती पारुल पिनाकिन मेहता | |
| 50. श्री नवरतनमल सुगता | |
| 51. श्रीमती आन्ति अरुण साठे | |
| 52. श्री शंकर खण्डेलवाल | |

MINISTRY OF INFORMATION & BROADCASTING

New Delhi, the 13th June, 2001

S.O. 2151.—In exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 and in suppres-sion of this Ministry's earlier Notification on the subject, the Central Government is pleased to reconstitute the Mumbai advisory panel of the Central Board of Film Certifica-tion and to appoint the following persons as members of the said panel with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Shri Prashant Dample
2. Shri Satish U. Pulekar
3. Adv Ashish Shelar
4. Shri Gajanan R. Ghurye
5. Shri Mahesh Kothare
6. Shri Vinod Pawar
7. Shri Arun Jain
8. Shri Sriprakash Menon
9. Shri Sunil Aggarwal
10. Shri Rakesh K. Upadhyay
11. Mrs. Vijayanti Kulkarni Apte
12. Adv Sahityalaxmi Deshpande
13. Mrs. Jyoti P. Alvani
14. Miss Sangita L. Pawar
15. Mrs. Ujwala Mishra
16. Smt. Hemlata Deepak
17. Smt. Vasanti Muzumdar
18. Dr. Rupa Patel
19. Smt. Vandana Vitankar
20. Mrs. Rita Makwana
21. Shri Raj Dutta
22. Shri Vijay Bahadur Chandra
23. Shri Charu Dutta Acharya
24. Shri Sridhar Phadke
25. Shri Shanti Dev
26. Smt. Laishri Mema Devi
27. Shri Vidhyadhar Nimkar
28. Shri Sudhir Nondgaonkar
29. Smt. Neela Upadhye
30. Capt. Yogesh Dubey
31. Mrs. Saroj Sharma
32. Shri Sabir Nirban
33. Shri Virendra Rajkishore Tripathi
34. Shri Iffekhar Khan
35. Shri Vilas P. Khanolkar

36. Shri Vinay Kumar Sinha
37. Shri Vitthalsing Mahipatsing Rajput
38. Shri Kasambhai Sorathia
39. Smt Shuchi S Halwasia
40. Shri Sharad C Shah
41. Smt Hema A Shukla
42. Shri Arun Jothadi
43. Dr (Mrs) Suman Jain
44. Shri Bhagat Hargovindars Mehta
45. Mrs Rani Kailash Poddar
46. Shri Bharat Karande
47. Dr. (Mrs) Kirtida Ramesh Mehta
48. Shri Jayesh B Shah
49. Smt Parul Pinakin Mehta
50. Shri Navratanmal Surana
51. Mrs Kranti Arun Sathe
52. Shri Shankar Khandelwal
53. Shri Iqbal Syed
54. Shri Bhalechandra Trivedi
55. Ms Alka Pandya
56. Ms Atima Mankotia
57. Ms Hiroo Mirchandani
58. Smt Bonani Das Gupta
59. Shri Kundan Vyas
60. Shri Dr Ajay Kothari
61. Smt Monica Burman
62. Smt Padmaja Phenny Joglekar
63. Ms Pratima L. Doshi
64. Smt Subhangi Ajit Tendulkar
65. Ms Promila Srivasthava
66. Smt Usha Mehta
67. Ms Vidya Hegde
68. Ms Gita Menon
69. Ms Rauf Ahmed
70. Shri Ali Reza Rizvi
71. Shri Jaidev Hathangadi
72. Shri Shekar Sen
73. Ms Devyani Khankhoje
74. Shri Ram Kelkar
75. Shri Subash Desai
76. Ms Neela Upadhyaye
77. Shri Kailash Morarka
78. Shri Manoj Dubey
79. Shri Narendra Sharma (Dr.)
80. Shri Sameer Desai
81. Sm Kokila Bhatt
82. Smt Leena Sen
83. Smt M Waghmare
84. Smt Shaila Hirekar
85. Smt Usha Thakkar

86. Smt Veena Prabhu
87. Smt Dina Ramakrishna
88. Ms Rekha Hatolkar
89. Ms Sangēetha Ohri
90. Shri N M. Alimchandani.

[F. No. 809/2/2000-F/C]

RAJESH SHARMA, Desk Officer

नई दिल्ली, 13 जून, 2001

का.आ. 2152.—केन्द्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 व 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा-5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का उपयोग करते हुए तथा उक्त विषय पर इस मंत्रालय की पूर्व अधिसूचना के अधिक्रमण में केन्द्रीय फिल्म प्रमाणन बोर्ड के कटक सलाहकार पैनल का पुनर्गठन करती है और उक्त पैनल के सदस्य के रूप में निम्नलिखित व्यक्तियों को दो वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, तत्काल प्रभाव से नियुक्त करती है :—

1. श्री संजीव मोहन्ती
2. श्री जय प्रकाश मोहन्ती
3. श्री नारायण प्रसाद
4. श्रीमती बनजला मिश्रा
5. श्री सुरेश पण्डा
6. श्रीमती नमिता पण्डा
7. श्री प्रमोद कुमार मोहपात्र
8. सुश्री प्रतिवा रे
9. श्रीमती अनीमा दास
10. सुश्री कृष्णा सतपथी
11. श्रीमती पद्मालय गोरबादू
12. श्रीमती सविता रौत्रे
13. श्रीमती प्रेमलता खुंटिया
14. श्री जगबन्धु मिश्रा
15. श्री नारायण चन्द्र रे मोहपात्र
16. डा. नगेन्द्र प्रधान
17. श्री रमेश चन्द्र त्रिपाठी
18. सुश्री असीमा बसु
19. श्री विजय मोहन्ती
20. श्री सुभाष दास
21. श्री गंगाधर प्रधान
22. श्री सत्य मोहन्ती कश्यप

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23. श्री सरत पुजारी
24. डा. जतिन नायक
25. श्री असीम बसु
26. सुश्री निवेदिता स्कूंदर
27. सुश्री शरता दास
28. सुश्री कुकुमीना दास
29. सुश्री शकुन्तला पण्डा
30. श्रीमती अध्याषा सतपथी
31. डा. पी. यशोदरा
32. डा. शंकरलाल पुरोहित
33. श्रीमती कस्तूरी पटनायक
34. श्री दीना नाथ पांथी

[फा. सं. 809/2/2000-एफ(सी)]

राजेश शर्मा, डेस्क अधिकारी

New Delhi, the 13th June, 2001

S.O. 2152.—In exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 and in supersession of this Ministry's earlier Notifications on the subject, the Central Government is pleased to reconstitute the Cuttack advisory panel of the Central Board of Film Certification and to appoint the following persons as members of the said panel with immediate effect for a period of two years or until further orders, whichever is earlier :—

1. Shri Sanjeeb Mohanty
2. Shri Jayaprakash Mohanty
3. Shri Narayan Prasad
4. Smt. Banalata Mishra
5. Shri Suresh Panda
6. Smt. Namita Panda
7. Shri Parmod Kumar Mohapatra
8. Ms. Prativa Ray
9. Mrs. Anima Das
10. Ms. Krishna Satpathy
11. Smt. Padmalaya Gorabada
12. Smt. Sabita Routray
13. Smt. Premlata Khuntia
14. Shri Jagabandhu Mishra
15. Shri Narayan Chandra Ray Mohapatra

16. Dr. Nagendra Pradhan
17. Shri Ramesh Chandra Tripathy
18. Ms. Asima Basu
19. Shri Bijay Mohanty
20. Shri Subash Das
21. Shri Gangadhar Pradhan
22. Shri Akshya Mohanty Kashyap
23. Shri Sarat Pujari
24. Dr. Jatin Nayak
25. Shri Asim Basu
26. Ms. Nibedita Scudder
27. Ms. Jharana Das
28. Ms. Kukumina Das
29. Ms. Sakuntala Panda
30. Mrs. Adyasha Satpathy
31. Dr. P. Yasodhara
32. Dr. Shanker Lal Purohit
33. Smt. Kasturi Patnaik
34. Shri Dina Nath Pathi.

[F. No. 809/2/2000-F(C)]

RAJESH SHARMA, Desk Officer

नई दिल्ली, 13 जून, 2001

का प्र. 2153 :—केन्द्र सरकार, खलवित्त (प्रमाणन) नियम, 1983 के नियम 7 व 8 के साथ पठित खलवित्त अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का उपयोग करते हुए तथा उक्त विषय पर इस मंत्रालय की पूर्व अधिसूचना के अधिग्रहण में केन्द्रीय फिल्म प्रमाणन बोर्ड के बंगलौर सलाहकार पैनल का पुनर्गठन करती है और उक्त पैनल के सदस्य के रूप में निम्नलिखित व्यक्तियों की दो वर्ष की अवधि या अगले आदेशों तक, जो भी पहले हो, तत्काल प्रभाव से नियुक्त करती है :—

1. श्री बी.एस. सुब्बा राजू
2. श्रीमती श्रीलता
3. श्रीमती शान्ता आचार्य
4. श्रीमती जयम्मा
5. श्रीमती एच.एस. पार्वती
6. श्री के.सी.एन. चन्द्रशेखर
7. श्री आर. लक्ष्मण
8. श्री अश्वत्थ नारायण
9. डा. सिद्धिलिङ्गा

10. श्री ए.आर. राजू
11. श्री बी.एन. सुब्बाराव
12. श्री बी.बी. राजाराम
13. श्री यगती मोहन
14. श्री गिरीश राव
15. श्री शालिनी प्रभु
16. श्रीमती रूपा कामर
17. श्रीमती माला गोविनाथ
18. कु. श्रुति
19. श्री के. गणेश
20. श्री एस.पी. बालसुब्रह्मण्यम
21. श्रीमती शशि प्रभा
22. श्रीमती शारदा
23. श्री दक्षिणामूर्ति
24. श्रीमती विजया लक्ष्मी
25. श्री एस.एस. मोहन
26. श्री बेलूर सुदर्शन
27. श्रीमती ग्रहणा ठक्कर
28. श्रीमती मंजुला एस. राव
29. श्री राजेन्द्र
30. श्रीमती शैलजा कृष्णा
31. श्रीमती मीरा फडके
32. श्रीमती सुधा नूति
33. श्री अब्दुल्ला इक्बाल
34. श्री अकरम बाबा
35. श्री रमेश बाबू
36. श्री वजीर ग्रहमद
37. श्री हरीश
38. श्री ए. रवि
39. श्री रंगनाथ
40. कु. स्वाति
41. श्रीमती वसन्ती रघुनाथ
42. श्रीमती पद्मा श्रीनिवासन
43. श्री कल्याणप्पा पाटिल
44. श्री चिन्ताश्रय्या
45. श्रीमती लक्ष्मी गोपीनाथ
46. श्री बी.एन. सुब्बाराव
47. श्री टी.एस. लक्ष्मण

48. प्रो. इक्बाल अहमद
49. श्रीमती यशोदा शेट्ट
50. श्रीमती पद्मा श्रीनिवासन
51. डा. शीला राव
52. सुश्री एस. भट्टा
53. सुश्री एन. दुग्गर
54. श्रीमती शान्ता आचार्य
55. श्रीमती वी. राजभार
56. श्रीमती कैसर फारुक

[फा.सं. 809/3/2000-एफ. (सी)]
राजेश शर्मा, डेस्क अधिकारी

New Delhi, the 13th June, 2001

S.O. 2153.—In exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 and in supersession of this Ministry's earlier Notifications on the subject, the Central Government is pleased to reconstitute the Bangalore advisory panel of the Central Board of Film Certification and to appoint the following persons as members of the said panel with immediate effect for a period of two years or until further orders, whichever is earlier :

1. Shri B. S. Subba Raju
2. Smt. Sreelatha
3. Smt. Shantha Acharya
4. Smt. Jayamma
5. Smt. H. S. Parvathi
6. Shri K. C. N. Chandrashekhar
7. Shri R. Lakshman
8. Shri Ashwathnarayana
9. Dr. Siddalingaiah
10. Shri A. R. Raju
11. Shri V. N. Subba Rao
12. Shri B. V. Rajaram
13. Shri Yagati Mohan
14. Shri Girish Rao
15. Shri Shalini Prabhu
16. Smt. Roopa Kamath
17. Smt. Mala Gopinath
18. Ku. Shruthi
19. Shri K. Ganesh
20. Shri S. P. Balasubramaniam
21. Smt. Shashi Prabha
22. Smt. Sharada
23. Shri Dakshinamurthy

24. Smt. Vijaya Lakshmi
25. Shri M. S. Mohan
26. Shri Belur Sudarshan
27. Smt. Aruna Thakkar
28. Smt. Manjula S. Rao
29. Shri Rajendra
30. Smt. Shylaja Krishna
31. Smt. Meera Phadke
32. Smt. Sudha Murthy
33. Shri Abdulla Iqbal
34. Shri Akram Basha
35. Shri Ramesh Babu
36. Shri Vazeer Ahmed
37. Shri Harish
38. Shri A. Ravi
39. Shri Ranganath
40. Ku. Swathi
41. Smt. Vasanthi Raghunath
42. Smt. Padma Srinivasan
43. Shri Kalyanappa Patil
44. Shri Chinaaiah
45. Smt. Lakshmi Gopinath
46. Shri V. N. Subba Rao
47. Shri T. S. Lakshman
48. Prof. Iqbal Ahmed
49. Mrs. Yashoda Shetty
50. Smt. Padma Srinivasan
51. Dr. Sheila Rao
52. Ms. S. Bharucha
53. Ms. N. Duggar
54. Mrs. Shanta Acharya
55. Mrs. V. Raghavan
56. Mrs. Kaiser Faruk.

[F. No. 809 3/2000-F.(C)]
RAJESH SHARMA, Desk Officer

संचार मंत्रालय
(दूरसंचार विभाग)
(राजभाषा अनुभाग)

नई दिल्ली, 8 अगस्त, 2001

का आ 2154.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10(4) के अनुसरण में संचार मंत्रालय, दूरसंचार विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों को जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

मुख्य महाप्रबंधक दूरसंचार हि.प्र. परिमंडल, गिमला

1. मंडल अभिवा. प्रचालन, मंगली (हि.प्र.)
2. उपमंडल अधिकारी तार, केलांग (हि.प्र.)

मुख्य महाप्रबंधक, उ.प्र. (पश्चिम) परिसंभल, देहरादून
महाप्रबंधक दूरसंचार जिला गौतम बुद्ध नगर, सेक्टर-19,
नोएडा।

[फा.सं. ई-11016/1/99-रा.भा.]]

आर.डी. मासीवाल, निदेशक (राजभाषा)

MINISTRY OF COMMUNICATIONS

(Department of Telecommunication)

(Official Language Section)

New Delhi, the 8th August, 2001

S.O. 2154.—In pursuance of rule 10(4) of the Official Language (use for official purpose of the Union), rules, 1976 the Central Government hereby notifies following offices under the administrative control of Ministry of Communications, Department of Telecommunications where of more than 80 per cent staff have acquired working knowledge of Hindi.

Chief General Manager Telecom Himachal Pradesh Circle, Shimla

1. Divisional Engineer Operation Manali (Himachal Pradesh).

2. Sub-Divisional Engineer Telegraph, Kailang (Himachal Pradesh).

Chief General Manager Telecom U.P. (West) Circle, Dheradhun

General Manager Telecom, Distt. Gautam Bhudh Nagar, Sector-19, Noida (U.P.).

No. E-11016/1/99-O.L.]

R. D. MASIWAL, Director (O.L.)

(डाक विभाग)

नई दिल्ली, 10 अगस्त, 2001

का.भा. 2155.—राजभाषा नियम, (संघ के शासकीय प्रयोजनों के लिए प्रयोग), 1976 के नियम-10 के उप नियम (4) के अनुसरण में केन्द्र सरकार डाक विभाग के निम्नलिखित अधीनस्थ कार्यालयों को, जिनके 80 प्रतिशत कर्मचारियों (ग्रुप "घ" कर्मचारियों को छोड़कर) ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :

1. मुख्य डाकघर, केलांग,
जिला लाहौल स्पिती (हिमाचल प्रदेश)-175132

2. उप डाकघर, मनाली
जिला—कुल्लू (हिमाचल प्रदेश)-176131

[सं. ई-11018-1/2001-रा.भा.]

अशोक कुमार सचदेव, उप निदेशक (राजभाषा)

(Department of Posts)

New Delhi, the 10th August, 2001

S.O. 2155.—In pursuance of Rule 10(4) of the Official Language (use for Official purposes of the Union) Rules, 1976, the Central Government hereby notify the following subordinate offices of the Department of Posts where 80 per cent staff has acquired the working knowledge of Hindi :

1. Head Post Office, Keylong
Distt-Lahaul & Spiti,
(H.P.) 175132.

2. Sub-Post Office,
Manali, Distt. Kullu,
(H.P.)-175131.

[No. E-11018-1/2001-OD]

A. K. SACHDEV, Dy. Director (OL)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 8 अगस्त, 2001

का.भा. 2156.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा 26 जून, 2001 के पूर्वाह्न से अगले आदेश होने तक के लिए पेट्रोलियम और प्राकृतिक गैस मंत्रालय में सचिव, श्री वी.एन.कौल, को श्री पी.शंकर के स्थान पर तेल उद्योग विकास बोर्ड के अध्यक्ष के रूप में नियुक्त करती है।

[नं. जी-35012/3/92-वित्त-II]

के.पी.के. नम्बिसन, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 8th August, 2001

S.O. 2156.—In exercise of the powers conferred by Sub-section (4) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints, with effect from the forenoon of the 26th June, 2001 and until further orders, Shri V. N. Kaul, Secretary, Ministry of Petroleum and Natural Gas, as the Chairman of the Oil Industry Development Board vice Shri P. Shankar.

[No. G. 35012/3/92-Fin. II]

K. P. K. NAMBISSAN, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 20 अगस्त, 2001

का. आ. 2157.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 176 तारीख 24 जनवरी, 2001 द्वारा इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा बरौनी से पटना तक पेट्रोलियम उत्पादों के परिवहन के लिए बिहार राज्य में विद्यमान बरौनी-कानपुर उत्पाद पाइपलाइन के समानान्तर उत्पाद पाइपलाइन बिछाने के प्रयोजनार्थ उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को तारीख 12 फरवरी, 2001 को उपलब्ध करा दी गई थी;

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार अर्जित करने की घोषणा करती है;

यह और कि केन्द्रीय सरकार, उक्त धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाय सभी विल्लंगमों से मुक्त, इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

अंचल - बाढ़	जिला - पटना	राज्य - बिहार		
गाँव का नाम	खसरा नं०	क्षेत्र		
		हेक्टेयर	आर	वर्गमीटर
1	2	3	4	5
सहरी	2671	0	0	40
	2672	0	6	57
	2674	0	9	03
	2675	0	6	84
	2682	0	0	40
	2686	0	6	81
	2687	0	0	40
	2692	0	1	16
	2693	0	0	93
	2694	0	0	59
	2695	0	0	40
	2489	0	5	25
	2488	0	2	31
	2487	0	2	84
	2486	0	2	84
	2485	0	3	10
	2484	0	5	71
	3565	0	3	65
	2481	0	4	69
	3564	0	3	70
	2467	0	7	68
	2466	0	2	82
	2465	0	2	59
	2464	0	3	30
	2459	0	0	81
	2458	0	8	3
	2456	0	1	39
	2455	0	1	6
	2454	0	3	88
	2453	0	8	15
	2446	0	6	54
	2447	0	11	32
	2448	0	2	87
	3550	0	6	2
	2413	0	7	26
	2877	0	0	40
	2878	0	4	90

1	2	3	4	5
	2883	0	3	28
	2882	0	5	82
	2881	0	3	33
	2880	0	0	40
	2885	0	1	66
	2886	0	0	40
	2888	0	8	87
	2889	0	11	35
	2890	0	9	14
	2891	0	3	54
	2338	0	4	37
	2337	0	1	57
	2326	0	1	25
	2327	0	7	64
	2328	0	0	52
	2325	0	0	40
	2324	0	8	34
	2316	0	0	83
	2318	0	4	80
	2319	0	3	75
	2323	0	1	4
	2313	0	0	83
	2304	0	4	62
	2299	0	0	74
	2302	0	4	25
	2303	0	5	45
	2305	0	0	65
	2306	0	6	40
	2307	0	4	32
	2308	0	3	45
	2309	0	0	41
	2068	0	5	17
	2069	0	6	50
	2067	0	0	40
	2070	0	0	76
	2085	0	5	59
	2071	0	5	42
	2072	0	3	93
	2073	0	5	1
	2074	0	5	59
	2075	0	0	40
	2076	0	7	94
	2077	0	4	36
	2078	0	0	40

1	2	3	4	5
	1893	0	10	95
	1892	0	0	69
	1891	0	4	94
	1890	0	4	40
	1911	0	0	40
	1912	0	0	65
	1889	0	0	40
	1913	0	12	47
	1749	0	1	11
	1747	0	0	40
	1088	0	0	40
	1089	0	0	40
	1090	0	4	0
	1091	0	3	51
	1095	0	5	26
	1096	0	2	84
	1097	0	2	18
	1098	0	3	44
	1099	0	0	40
	1100	0	1	52
	1101	0	2	21
	1119	0	1	76
	1120	0	1	1
	1121	0	0	40
	1118	0	7	10
	1105	0	0	58
	1114	0	1	85
	1117	0	0	92
	1116	0	1	33
	1115	0	1	16
	800	0	0	40
	799	0	6	57
	750	0	3	5
	752	0	3	60
	753	0	9	30
	757	0	0	40
	758	0	1	84
	759	0	5	17
	749	0	0	40
	760	0	9	30
	761	0	0	40
	744	0	2	66
	743	0	1	80

1	2	3	4	5
	742	0	0	40
	727	0	6	10
	726	0	0	40
	725	0	3	5
	724	0	0	40
	728	0	6	3
	729	0	5	30
	716	0	0	40
	525	0	3	15
	526	0	7	93
	528	0	0	65
	520	0	1	29
	529	0	4	43
	505	0	5	61
	510	0	4	90
	506	0	7	11
	507	0	6	27
	508	0	5	45
	488	0	0	41
	487	0	4	12
	486	0	7	66
	471	0	0	40
	472	0	4	45
	476	0	0	40
	475	0	0	97
	474	0	3	74
	473	0	0	56
	447	0	2	21
	446	0	6	81
	445	0	4	63
	444	0	3	0
	427	0	3	37
	426	0	3	33
बीडना	3199	0	0	58
	3201	0	5	11
	3203	0	1	14
	3204	0	0	93
	3205	0	0	74
	3206	0	0	40
	3207	0	0	40
	3054	0	9	17
	7126	0	5	59

1	2	3	4	5
	2431	0	4	40
	2430	0	3	41
	2437	0	5	26
	2438	0	5	18
	2439	0	5	10
	2440	0	2	55
	2417	0	11	44
	2418	0	0	40
	2441	0	1	37
	2456	0	6	12
	2457	0	4	25
	2455	0	0	40
	2458	0	4	29
	2459	0	14	54
	2460	0	0	57
	2415	0	1	66
	2416	0	0	40
	2484	0	0	76
	2334	0	4	66
	2361	0	0	55
	2321	0	7	77
	2322	0	3	86
	2333	0	1	61
	2342	0	6	54
	2335	0	0	40
	2341	0	0	52
	2336	0	5	28
	2338	0	9	28
	2337	0	2	98
	2279	0	8	87
	2299	0	0	40
	2298	0	7	66
	2295	0	3	27
	2296	0	0	40
	2293	0	6	2
	2290	0	4	73
	2289	0	0	70
	2288	0	3	0
	2284	0	4	16
	2285	0	5	8
	2000	0	6	83
	2001	0	6	38
	2002	0	2	3

1	2	3	4	5
	1976	0	0	40
	1998	0	2	42
	1996	0	2	42
	1995	0	0	69
	1997	0	3	0
	1999	0	2	82
	2015	0	0	40
	2016	0	8	38
	2017	0	2	21
	2024	0	6	82
	2025	0	0	40
	2023	0	0	63
	2031	0	3	8
	2030	0	2	48
	2029	0	1	80
	2032	0	7	39
	2033	0	0	40
	2063	0	1	56
	2062	0	0	40
	2061	0	6	0
	2060	0	1	42
	2059	0	1	80
	2052	0	2	49
	2056	0	7	15
	2057	0	0	40
	2055	0	4	43
	2054	0	3	69
	2053	0	3	88
	2045	0	3	69
	1564	0	0	74
	1576	0	3	33
	1577	0	12	17
	1580	0	0	40
	1578	0	4	93
	1579	0	12	31
	1589	0	0	40

[फ़. सं. 31015/56/2000-ओ.आर-I]

एस. चन्द्रशेखर, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 20th August, 2001

S. O. 2157.— Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 176 dated the 24th January, 2001, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in land specified in the Schedule appended to that notification for the purpose of laying a parallel product pipeline for the transportation of petroleum products from Barauni to Patna along the existing Barauni – Kanpur product pipeline in the State of Bihar by the Indian Oil Corporation Limited;

And whereas, the copies of the said gazette notification were made available to the public on 12th February, 2001;

And whereas, the competent authority in pursuance of sub-section (1) of section 6 of the said Act, has submitted his report to the Central Government;

And whereas, the Central Government, after considering the said report, is satisfied that the right of user in land specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in land specified in the Schedule appended to this notification are hereby acquired;

And further, in exercise of the powers conferred by sub-section (4) of the said section, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

Schedule

Anchal - BARH		District - PATNA		State - BIHAR	
Name of Village	Khasra No./ Plot No	Area			
		Hectare	Are	Centiare	
1	2	3	4	5	
SAHRI	2671	0	0	40	
	2672	0	6	57	
	2674	0	9	03	
	2675	0	6	84	
	2682	0	0	40	
	2686	0	6	81	
	2687	0	0	40	
	2692	0	1	16	
	2693	0	0	93	
	2694	0	0	59	
	2695	0	0	40	
	2489	0	5	25	
	2488	0	2	31	
	2487	0	2	84	
	2486	0	2	84	
	2485	0	3	10	
	2484	0	5	71	
	3565	0	3	65	
	2481	0	4	69	
	3564	0	3	70	
	2467	0	7	68	
	2466	0	2	82	
	2465	0	2	59	
	2464	0	3	30	
	2459	0	0	81	
	2458	0	8	3	
	2456	0	1	39	
	2455	0	1	6	
	2454	0	3	88	
	2453	0	8	15	
	2446	0	6	54	
	2447	0	11	32	
	2448	0	2	87	
	3550	0	6	2	
	2413	0	7	26	
	2877	0	0	40	
	2878	0	4	90	

1	2	3	4	5
	2883	0	3	28
	2882	0	5	82
	2881	0	3	33
	2880	0	0	40
	2885	0	1	66
	2886	0	0	40
	2888	0	8	87
	2889	0	11	35
	2890	0	9	14
	2891	0	3	54
	2338	0	4	37
	2337	0	1	57
	2326	0	1	25
	2327	0	7	64
	2328	0	0	52
	2325	0	0	40
	2324	0	8	34
	2316	0	0	83
	2318	0	4	80
	2319	0	3	75
	2323	0	1	4
	2313	0	0	83
	2304	0	4	62
	2299	0	0	74
	2302	0	4	25
	2303	0	5	45
	2305	0	0	65
	2306	0	6	40
	2307	0	4	32
	2308	0	3	45
	2309	0	0	41
	2068	0	5	17
	2069	0	6	50
	2067	0	0	40
	2070	0	0	76
	2085	0	5	59
	2071	0	5	42
	2072	0	3	93
	2073	0	5	1
	2074	0	5	59
	2075	0	0	40
	2076	0	7	94
	2077	0	4	36
	2078	0	0	40

1	2	3	4	5
	1893	0	10	95
	1892	0	0	69
	1891	0	4	94
	1890	0	4	40
	1911	0	0	40
	1912	0	0	65
	1889	0	0	40
	1913	0	12	47
	1749	0	1	11
	1747	0	0	40
	1088	0	0	40
	1089	0	0	40
	1090	0	4	0
	1091	0	3	51
	1095	0	5	26
	1096	0	2	84
	1097	0	2	18
	1098	0	3	44
	1099	0	0	40
	1100	0	1	52
	1101	0	2	21
	1119	0	1	76
	1120	0	1	1
	1121	0	0	40
	1118	0	7	10
	1105	0	0	58
	1114	0	1	85
	1117	0	0	92
	1116	0	1	33
	1115	0	1	16
	800	0	0	40
	799	0	6	57
	750	0	3	5
	752	0	3	60
	753	0	9	30
	757	0	0	40
	758	0	1	84
	759	0	5	17
	749	0	0	40
	760	0	9	30
	761	0	0	40
	744	0	2	66
	743	0	1	80

1	2	3	4	5
	742	0	0	40
	727	0	6	10
	726	0	0	40
	725	0	3	5
	724	0	0	40
	728	0	6	3
	729	0	5	30
	716	0	0	40
	525	0	3	15
	526	0	7	93
	528	0	0	65
	520	0	1	29
	529	0	4	43
	505	0	5	61
	510	0	4	90
	506	0	7	11
	507	0	6	27
	508	0	5	45
	488	0	0	41
	487	0	4	12
	486	0	7	66
	471	0	0	40
	472	0	4	45
	476	0	0	40
	475	0	0	97
	474	0	3	74
	473	0	0	56
	447	0	2	21
	446	0	6	81
	445	0	4	63
	444	0	3	0
	427	0	3	37
	426	0	3	33
BIRHANA	3199	0	0	58
	3201	0	5	11
	3203	0	1	14
	3204	0	0	93
	3205	0	0	74
	3206	0	0	40
	3207	0	0	40
	3054	0	9	17
	7126	0	5	59

1	2	3	4	5
	2431	0	4	40
	2430	0	3	41
	2437	0	5	26
	2438	0	5	18
	2439	0	5	10
	2440	0	2	55
	2417	0	11	44
	2418	0	0	40
	2441	0	1	37
	2456	0	6	12
	2457	0	4	25
	2455	0	0	40
	2458	0	4	29
	2459	0	14	54
	2460	0	0	57
	2415	0	1	66
	2416	0	0	40
	2484	0	0	76
	2334	0	4	66
	2361	0	0	55
	2321	0	7	77
	2322	0	3	86
	2333	0	1	61
	2342	0	6	54
	2335	0	0	40
	2341	0	0	52
	2336	0	5	28
	2338	0	9	28
	2337	0	2	98
	2279	0	8	87
	2299	0	0	40
	2298	0	7	66
	2295	0	3	27
	2296	0	0	40
	2293	0	6	2
	2290	0	4	73
	2289	0	0	70
	2288	0	3	0
	2284	0	4	16
	2285	0	5	8
	2000	0	6	83
	2001	0	6	38
	2002	0	2	3

1	2	3	4	5
	1976	0	0	40
	1998	0	2	42
	1996	0	2	42
	1995	0	0	69
	1997	0	3	0
	1999	0	2	82
	2015	0	0	40
	2016	0	8	38
	2017	0	2	21
	2024	0	6	82
	2025	0	0	40
	2023	0	0	63
	2031	0	3	8
	2030	0	2	48
	2029	0	1	80
	2032	0	7	39
	2033	0	0	40
	2063	0	1	56
	2062	0	0	40
	2061	0	6	0
	2060	0	1	42
	2059	0	1	80
	2052	0	2	49
	2056	0	7	15
	2057	0	0	40
	2055	0	4	43
	2054	0	3	69
	2053	0	3	88
	2045	0	3	69
	1564	0	0	74
	1576	0	3	33
	1577	0	12	17
	1580	0	0	40
	1578	0	4	93
	1579	0	12	31
	1589	0	0	40

[No. R-31015/56/2000 OR-I]

S. CHANDRASEKHAR, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 30 जुलाई, 2001

का.आ. 2158:— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण—I हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-07-2001 को प्राप्त हुआ था।

[सं.एल-12012/73/93-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 30th July, 2001

S.O. 2158.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal-I Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 27-7-2001.

[No. L-12012/73/93-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri Syed Abdullah, B.Sc., B.L.,
Industrial Tribunal-I.

Dated : 18th day of June, 2001

Industrial Dispute No. 59 of 1999

BETWEEN

The President, All India Ex-Servicemen Bank Employees' Federation (A.P. Unit) Regd. No. 10 of 1979, having its Head Office, at B-30, Manak Vihar, P.O. Tilak Nagar, New Delhi-18 and Regional Office, at D. No. 24-1-4A, Sambamurthy Road, Ramanagaram, Vijaywada-3. ... Petitioner.

AND

1. The Assistant General Manager, State Bank of India, Region III, Zonal Office, Renigunta Road, Tirupati, Chittoor District.

2. The Chief General Manager, State Bank of India, Local Head Office, Hyderabad. ... Respondents.

APPEARANCES :

Sri N. Rushendra Reddy, Advocate for the Petitioner.

Sri B. G. Ravindra Reddy, Advocate for the Respondents.

AWARD

The Government of India, Ministry of Labour, New Delhi by its letter No. 12012/73/93-IR(B)(I) has referred the dispute under Sub-Section (1) and Sub-Section (2)(A) of Section (10) of the I.D. Act for adjudication of the dispute between the Management of the State Bank of India Tirupati Region and workman Sri Subramanya Sharma a re-employed ex-serviceman on the issue to the schedule of the reference which is as under :

"Whether the action of the management State Bank of India Tirupati Region in not allowing Subramanya

Sharma, re-employed ex-serviceman to appear for the promotion test conducted during 1985 is legal?"

If not to what relief the workman is entitled for? After the appearance, the parties have filed their pleadings.

2. On behalf of the workman the president of the All India, Ex. Servicemen Bank employees Federation has filed the claim statement and in brief the averments are as under :

The aggrieved workman (P. Subramanya Sharma) herein had joined in the respondent's Bank as clerk-cum-cashier on 9-1-76 against the reserved vacancy of ex-servicemen, and he was denied the promotion as officer in Junior management-I (OJMGD-I) w.e.f. 1-8-95 and also denied further promotion at the second stage as officer Middle Management Grade-II w.e.f. 1-11-92. The respondent had overlooked the published circular instructions while conducting OJMGD-I promotion test of 1985 to allow the workman to appear for the said test and so also for the second stage promotion test which was held on 10-1-93. As per rules seniority criteria will be decided by the bank to a particular cut-off date basing on the issue of availability of OJMGD-I posts in the ratio of 1 : 4. Each workman will have a maximum of 5 chances to write the test of OJMGD-I followed by an interview as per rules and employee who had crossed 50 years and had failed all 5 chances in the written test will not be permitted to write further written test of the said post. Though the workman herein was eligible for the promotion test held on 22-9-95 but he was denied with the opportunity by an arbitrary and discriminatory act. The employees who have joined on or before 31-12-75 were eligible to appear for the said test as per the bank circular letter (PER) 42 dated 7-5-86 which was issued in this regard so also circular letter (PER) (P&C) 7, dt. 15-3-93 issued for the above said promotional posts

3. The ex-servicemen are entitled for the weightage of service as per Central Office letter F. No. 218/78 SCT (B), dt. 28-1-83 para (4) for entitlement of weightage for out of cadre promotion. By a subsequent amendment the Government of India by its Order dt. 28-1-83 has ordered weightage for the period of service rendered in the armed forces in the ratio of 5:1 subject to maximum 2 years after they have rendered atleast 3 years of service in the bank after re-employment. Ignoring the above guidelines the workman was denied with the opportunity though he was eligible for OJMGD-I promotion test conducted in 1985. As per rules the senior most employee had to officiate a temporary vacancy of OJMGD-I and officiate the same while so he was served with a letter with the branch manager vide letter No. F 25 dt. 1-7-95 that since the workman crossed 50 years of age will not be considered to write OJMGD-I promotion post so also official in higher capacity. The workman through his representation dated 12-6-97 submitted his grievances to the trade union i.e. Central Secretary SBI Staff Union, Hyderabad with a view to get the above matter settled amicably within available grievance settlement procedure of the banks in terms of staff circular No. 56 dt. 22-7-97 but no action was taken. The aggrieved workman has now reached the age of 57 years and reaching superannuation and since injustice was caused in promoting him, in the interest of justice he ought to be promoted in the post OJMGD-I w.e.f. 1-8-85 in the form of deemed promotion waiving the procedure of written test/interview fixing appropriate seniority on par with the employees of 1-11-92 who were promoted as officers so also for the second stage of promotion. Hence prayed to adjudicate the dispute and grant the reliefs as prayed for.

4. The respondent Banks Administration is being guided and controlled by the Central Government i.e. by the Secretary, Ministry of Finance, New Delhi. The bank is obliged to follow the guidelines and directions meticulously. The State Bank of India Central Office Bombay was advised by the Ministry vide OMF No. 2/8/78 SET(B) dated 28-1-83 which reads as under :

"If certain number of years of services are prescribed as minimum eligibility criteria for promotion from one cadre to another, Rules in this regard may suitably be modified to give defence forces." The first respondent who is the promoting authority had convened and conducted a promotion test for

OJMGD-I vide circular No. 109 dated 7-8-85 with the criteria of out of service seniority for eligibility for general category of employees as on 31-12-75. The above test was conducted on 22-9-85 and about 650 employees were promoted in the said posts w.e.f. 1-8-85. Even though the workman herein who had eligibility in all respect for appearing for the OJMGD-I promotion test conducted on 22-9-85 he was denied with the said opportunity by not allowing him to write for the said examination. He was also not communicated the reasons as to why he was not permitted to write the said examination as such it is violative of the principles of natural justice. The Juniors were already promoted. Thereby the workman was put to mental trauma harassment and humiliation while working in the clerical cadre only. The criteria of service seniority fixed by the Bank for the above test was that all those clerks and cashiers who have joined the service on or before 31-12-75 are eligible to write the test. The workman herein had joined in the bank on 18-11-77 as re-employed ex-serviceman's post. As per the instructions of the Ministry of Finance referred to above the workman should have been given weightage of service based on his length of service in the defence service. The Government orders were published through circular No. 88 dt. 8-6-84 giving its effect for implementation as such the management ought to have extended the weightage of (11) years of service to the workman which was given a go bye illegally, so as to deny opportunity to the workman to appear for the test in 1985.

5. Subsequently the Government of India had issued another O.M. letter dt. 28-1-83 on the same subject modifying the earlier order to the effect that 'weightage is to be given for the purpose of out of cadre promotion in the ratio of one year for every 5 years of service put in the armed forces subject to a maximum of 2 years in total service'. Ex. servicemen employees recruited against the reserved vacancies will be entitled to the benefit of weightage of service for promotion only once during the entire service in the bank. The bank had published a circular dt. (PFR) 28/1-4-87 and by means of it the workman herein got 2 years of weightage. And he was qualified to appear for the promotion test. By the time (i.e. 1985) the above test was conducted the workman was under 50 years of age. Though he was eligible he was deliberately victimised and denied with the opportunity by the management arbitrarily. A large number of officer promotees of 1-8-85 batch were further promoted to the middle management grade also i.e. M.M. Grades Scale-II w.e.f. 1-11-95 by holding oral interviews.

6. The respondent/management have entered into an agreement with the recognised union of the Bank on 12-2-87 in terms of Section 9(A) of the I.D. Act to afford 2 years of weightage to Ex-servicemen re-employed in the banks and the same was published in Bank's circulars No. 28 dt. 1-4-87 having its implementation effect. The second time publication of the said orders after a belated period of 4 years vide circular dt. 1-4-87 without making any reference to its earlier publication on the same matter dt. 8-6-84 tantamounts to malafides on the part of the bank authorities which was done with a view to deny the privilege extended to ex-serviceman re-employed in the bank. The bank is well aware of the Government's instructions on the subject since 28-1-83. The action of Management to avoid promotional chances to the workman is a gross injustice and unconstitutional. It also amounts to altering of Section 9(A) of the I.D. Act in changing the workman's service condition and entering with the settlement with the union 4 years after the issuance of the Government orders which also amounts to violation of the provisions of I.D. Act. The workman in his letter dated 31-1-96 addressed to consider the eligibility in allowing him to write the promotion test of OJMGD dt. 11-2-96 but his request was turned down by the second respondent vide letter dated 11-4-96 informing that he is above 50 years of age and as such not eligible. As per the policy laid down by the bank senior most employees are allowed to officiate in higher capacity whenever a temporary vacancy of OJMGD-I arises. The workman herein was allowed to officiate in said post in Katta Jai Branch Vijayawada till February, 1996 until he reached the age of 52 years, while so 2nd respondent abruptly informed not to officiate the said post by giving a circular LITO/CDO/(PFR)/22/96/8-96 that the employees who have

reached 50 years of age are deemed to have exhausted of the chances for promotion to OJMGD-I and so they should not be allowed to officiate in higher capacity which amounts to victimisation and harassment.

7. The workman represented his grievances before A.C.L. (Central) Vijayawada, but the respondent had not co-operated in settling the dispute. The Central Government order have retrospective effect from the date of origination i.e., 28-1-83 or publication by the Bank vide its staff circular No. 88, dt. 8-6-84. Even if 2 years weightage is extended, the cut-off date of General category being 31-12-75, the eligibility to write the said test stands as up to 31-12-77 in respect of the workman. The bank could have extended 2 years weightage to him as a re-employed, ex-serviceman when such benefit being allowed to SC/ST category of employees at the time of conducting test in 1985 and if at all they had any clarification to make or being inconvenienced to extend 11 years of service benefit as per earlier Government orders they could have included the name for promotion test and results could have been kept in abeyance in a sealed cover till receipt of clarification. No such efforts were made by the management. The Junior employees who are within 50 years of age were promoted to the disadvantage of the workman over riding his seniority. Hence it is prayed to direct the respondents to promote the workman as an officer in Junior Management Grade-I, w.e.f. 1-8-85 in the form of deemed promotion and fix him in the subsequent stage of promotion, otherwise he will suffer loss and hardship.

8. The respondent filed the counter and briefly stated that the averments are as under. The dispute is untenable both of facts and under law, so it is liable to be dismissed in limine which was raised after an abnormal and unexplained delay. Though the workman joined as clerk-cum-cashier on 9-7-76 under ex-service quota, the promotion to the post of OJMGD-I is not a matter of routine. Those having requisite number of years of service and not crossing the age of 50 years and fulfilling all other requisite conditions are only eligible to appear for the written test. Those who come out successfully in the written test only allowed to appear for the interview basing on the over all performance of the candidate and depending upon the number of vacancies in that year promotion will be effected. Similarly for MMGS-II also the same procedure was followed. The Ministry only issues guide lines which are recommendatory in nature but the same are not administrative orders muchless the same become service conditions applicable to the staff and officers of the bank, unless the same are adopted by the bank after fulfilling the requisite conditions and following the procedure as provided under the provisions of I.D. Act.

A letter dt. 28-1-83 issued by the Ministry of Finance containing inter-alia guidelines of fixation to pay the ex-servicemen re-employed in public sector banks, which guidelines are not inconsonance with the spirit of the instructions as interpreted by the workman. It cannot be gain said that such guidelines do not per se become the service conditions of the bank employees unless such guidelines are adopted by the bank after fulfilling all the requisite conditions and procedure required in that regard as per the provisions of the I.D. Act Awards and Binartite settlement governing the terms and conditions of service applicable to the work staff and also the service rules as applicable to the officers. On receipt of the guidelines from the Government of India, and after obtaining necessary administrative clarifications from the Ministry the matter was discussed with the All India State Bank of India Staff Federation the recognised union comprising of substantial majority of about 98 per cent of work forces as its members on several occasions and ultimately a settlement was reached only on 17-2-87 and basing on the said settlement Circular Letter No. (PFR) 28 dt. 1-4-87 was issued inter-alia extended the services weightage to ex-servicemen for appearing for promotion test. The instructions under circular were given prospective effect viz., 1-4-1987 as the retrospective effect to such instructions will result in hardship to the other workmen staff and may unsettle the promotion tests conducted earlier. For the test conducted on 22-9-85 the cut-off date was 31-12-1975. The criteria was that of the persons working as clerk-cashier and had joined the services on or before 31-12-75 and those who are not over 50 years of age as on 1-8-85 were only eligible for the test as on that date there were no extent instructions, requiring the extension of services weightage to ex-serviceman. The petitioner found not eligible to write the test as he had joined in the bank of 9-1-1976. The service conditions of

employees cannot be changed unilaterally and it cannot be done only after the following due procedure, particularly in view of Section 9(A) of the I.D. Act. As regards the test held on 25-4-93, eligibility criteria was that the persons who had joined on or before 31-12-75 and not crossed the age of 50 years were only eligible, vide Circular Letter (PER) 25, dt. 26-3-1993. As the petitioner was born on 1-7-1940 therefore he was not eligible to write the said test. As regards the test conducted on 27-8-89 the cut-off date for service was 31-12-75 and after extending service weightage of 2 years as provided for, vide circular letter (PER) 28 dated 1-4-87, the claimant was not eligible to write for the said test as he was appointed on 9-1-1976 and the 2 years of weightage can permit the date of his appointment to be reckoned as 9-1-76 which is not within the cut-off date. Circular letter's (PLR) 28 (PER) 56 dated 1-4-87 and 1-8-89 respectively. The enclosed annexures may be read as part of the counter. Vide circular No. 88 dated 6-6-84 related to fixation of pay and other allowances to ex-servicemen which has nothing to do with the promotion of OJM. There was neither any discrimination nor victimisation as alleged by the workman. As the workman had crossed 50 years of age he was not eligible to write for promotion test for OJMG-I held on 11-2-96. Further as per the bank's extended instructions and guidelines employees over 50 years of age should be deemed to have exhausted of the chances of promotion to 'OJMG' and consequently should not be permitted to officiate in such position. Vide Circular No. L.H.O/CDO/PER/22/96/97 dated 26-8-96. There are no merits in the dispute. Hence prayed to dismiss the claim.

9. The point for consideration is whether the workman is entitled to the reliefs as claimed for?

10. In order to prove the claim, the workman examined himself as W.W. 1.

11. The gist of W.W.1's evidence is as under : That he was appointed on 9-1-1976 as a clerk-cum-cashier. During 1985, a test for junior Management-I was conducted and for which post the cut off date of seniority was fixed as 31-12-1975 he had put in more than 11 years of defence service, he could have been given weightage allowing him to sit for the test, by following the circular No. 88 dated 6-6-84 which is Ex. W1. About the weightage, the Government of India made certain modifications by issuing a circular dated 1-4-87 which is Ex. W2. By the time of conducting the said test in 1985 himself (Mr. P. Subramanya Sharma) was 50 years, and even then he was not allowed to write the test, so the management may be directed to treat him as an officer in Junior Management Grade-I w.e.f. 1-8-1985 in the form of deemed promotion with all attendant benefits. For the subsequent test he crossed 50 years of age and he was not called for the test. To his disadvantage his juniors below 50 years of age were given promotion.

12. On the side of the management, the Manager personal HRD was examined whose evidence is as under.—To have a promotion from one cadre to another cadre must have qualified services and as fixed by the Bank. Those who are qualified will be allowed to sit for the written test and after qualifying in it the candidate will be called for interview.

Basing on over and all performance in written and oral test the candidate will be selected subject to the availability of the vacancies. In promotion of MNGS-II the same procedure will be followed. In 1983 the Finance Ministry issued guidelines for fixation of pay and services weightage etc., of ex-service which circular is Ex. W6. In 1984 there was a settlement with regard to weightage for fixation of ex-servicemen employees and it was done after discussion with recognised unions and in pursuance of it Ex. W2 circular was issued. OJMG-I test was conducted for the first time on 22-9-85 and in this regard the bank issued Ex. W5 circular fixed the criteria. The workman was not eligible for the test as per Ex. W5 circular. The second test for the same post was conducted on 27-8-89 and for this Ex. M1 circular was issued on 1-8-89. As per the eligibility the employee should have been appointed on 31-12-73 and should not have crossed 50 years as on 1-8-88. As the workman was appointed on 9-1-1976 and after reckoning 2 years weightage basing on Ex. W2 circular he was not become eligible for the qualifying test of O.M.J-I again third test was conducted on 25-4-93 for which Ex. M2 circular dated 26-3-93 was issued fixing the qualifications and as per Ex. M2 the employees should have been appointed on or before 31-12-75 and should not have crossed 50 years of age as on 1-8-92 and since the workman has crossed the age he was not eligible for it. Again on 26-3-93 the bank had issued Ex. M3 circular disqualifying the employees who had crossed 50 years of age to officiate the said post temporarily.

13. The crux of the dispute is that the workman who is an ex-servicemen on re-employed working as clerk-cum-Cashier though was eligible to appear for the test of Junior Management Grade-I which was held and conducted as per circular letter No. 109 dated 22-9-85 he was deprived of the opportunity without any reason what so ever which is violative of the principles of natural justice. Consequent to denial of the opportunity he lost the next promotional post of bank as officer middle management Grade-II w.e.f. 1-11-1992. According to the workman since he has 11 years of defence service he is entitled for the weightage of service and as per the amended circular Ex. W7 dt. 1-4-87 is entitled for 2 years of weightage. Had he been allowed for the test by virtue of his academic qualification and experience

he would have passed the test and since he was deprived of the opportunity of promotion, a direction to be given that the workman is a deemed promotee to the post of Junior Grade-I w.c.f. 1-8-85 with all attended benefits and also for the subsequent promotional post w.e.f. 1-11-92.

14. Whereas the management has taken the stand for the promotional post of Clerk-cum-Cashier in OJM Grade-I and one must have a qualified service and age prescribed by the bank and having eligibility to sit for the qualifying examination i.e. (written test). After qualifying in the written test the candidates will be qualified for the interview and basing on the over all performance in the written and oral test, the candidate will be selected depending on the availability of vacancies. For the next promotion of MWGS-II the same procedure to be followed. As per the 1983 guidelines issued by Ministry of Finance in respect of pay, service weightage etc., covered by Ex. W6 of the employees, the management after holding discussion with the recognised All India State Bank of India Staff employees Federation Settlement dt. 17-2-87 was entered into. Pursuant to the said settlement the bank had issued a circular which is Ex. W2 regarding the weightage of service to the Ex. Service employees making them eligible for the promotional post of OJM-I A test was conducted for the first time on 22-9-85 for which Ex. W5 circular was issued prescribed certain qualifications under which a candidate should have been appointed in the service on or before 31-12-75 and his age should not exceed 50 years as on 1-8-85. Since the workman was appointed on 9-1-76 he had no eligibility as per Ex. W5 circular. Subsequently the 2nd test was held for the same post on 27-8-89 covered by Ex. M1 circular dt. 1-8-89 prescribing the qualifications that the employees should have been appointed on or before 31-12-73 and should not have crossed 50 years of age as on 1-8-88 since the workman was appointed on 18-11-87 in spite of getting 2 years of weightage as per Ex. M2 circular he was not eligible for the qualified test of MG-I. Again for the third time, the test was conducted on 25-4-93 for which Ex. M2 circular dt. 26-9-93 was issued fixing the qualification under which an employee should have been appointed on or before 31-12-75 and his age should not exceed 50 years as on 1-9-92.

By the date of third test the workman had crossed 50 years age and since Ex. M2 circular stipulated that one should not cross 50 years as on 1-8-92 he was not eligible for all the three tests. Further as per Ex. M3 circular dated 16-8-96 the employees who have crossed 50 years of age by the date of the circular cannot also officiate the post of O.M. G-II.

15. To resolve the dispute with reference to the factual aspects, the evidence let in by the parties read with documents which are the guidelines issued by the Government of India, Ministry of Finance & Circular Viz., Ex. W1 to W8, M1 to M3 are to be examined carefully analysing it by interpreting the guidelines and circulars.

16. Undisputedly the workman as an ex-serviceman on re-employment was appointed as Clerk-cum-Cashier on 9-1-1976. Ex. W1 is a guidelines dated 28th January, 1983 issued for fixation of pay of ex-service employees working in Public Sector Banks Para 4 of it is relevant in this dispute which is to the effect that 'if certain number of years of service are prescribed as a minimum eligibility criteria for promotion from one cadre to another Rules in this regard may be suitably modified to give weightage to ex-servicemen on the basis of their services in defence force'.

17. No doubt the workman had 11 years of defence service but he cannot claim entire services as weightage. The guidelines itself had made it clear that rules may be suitably modified. For making rules or modifying it, the management cannot independently act and it had to consult the recognised and registered employees union of State Bank Employees Federation and thereby the management had to discuss it with the employees union and ultimately entered into a settlement on 17-2-87 and followed by it. Ex. W2 circular came into effect for giving weightage to ex-service employees. Para (1) of the circular is relevant which is to the effect that 'weightage is to be given for the purpose of out of cadre promotions in the ratio of 1 year for every 5 years of service put in the Armed forces subject to a maximum of 2 years in total service. No Pro-rata weightage should be given to an ex-servicemen employee'. Therefore, it is clear that after completion of 3 years of service in the post of clerk-cum-cashier as

per Ex. W2 circular an ex-service employee is entitled for 2 years additional service weightage. As a result of which his service is to be counted from 9-1-78 onwards for the purpose of seniority and for further promotion.

18. The claim of the workman is that for OJMD-I post test was conducted on 22-9-1985 for which Ex. M1 circular was issued fixing qualification that the candidate should have been appointed on or before 31-12-1975 and his age not exceed 50 years on 1-8-85. In para 8 of the claim statement is stated that the workman was aged 44 years by the time the test was conducted in 1985, while so he was not allowed and discriminated.

19. Ex. W5 circular is the basis to decide the question in issued. As per eligibility criteria of Ex. M1 (item II) that relates to service which is to the effect that the employee should have been appointed on or before 31-12-75. In case S.C. and S.T. em- by 31-12-77. Admittedly v appointment of the workman itself was on 9-1-76 that he must put in a minimum of 3 years of service for getting 2 years of weightage. Even after getting weightage there was no possibility for the workman to have the eligibility as his appointment was not on or before 31-12-75. May be that on 1-8-85 the workman was 44 years of age but he was not eligible at all, as his appointment was after 31-12-75.

20. The second test was held on 27-8-89 for which Ex. M1 circular dt. 1-8-89 was issued in which the qualification prescribed are that the employees should have been appointed on or before 31-12-73 and should not have been crossed 50 years of age as on 1-8-88, obviously the workman was not eligible for second test as his appointment was on 9-1-76 and by adding 2 years of weightage of service after 3 years of regular service.

21. The third test was conducted on 25-4-93 for which Ex. M2 circular dt. 26-3-93 was issued prescribing qualifications under which the employees should have been appointed on or before 31-12-75 and his age should not exceed 50 years as in 1-8-92. As on 1-8-92, the workman had crossed the age of 50 years so he could not be eligible.

22. Subsequently another circular No. 22/96-97 dated 26-8-96 was issued clarifying that those employees who have crossed 50 years of age should be deemed to have exhausted the chances of promotion to the post of O.J.M.D-I and consequently they should not be promoted to officiate in such positions.

23. The strong hold contention of the workman is that Ex. W1 guidelines issued by the Government of India the ex-service employees are given certain protection and the implementation of the orders were delayed for 4 years which has adversely effected the prospects of him and other ex-service employees and taking into consideration that Ex. W1 has an over riding effect they are to be treated as promoted w.e.f. 1-8-85.

24. Whereas the contention of the respondent is that Ex. W1 guidelines are recommendatory in nature and the management cannot arbitrarily frame rules and fix the cut off dates as eligibility criteria for promotion of the employees without entering into the Bipartite Settlement with All India Bank Employees Federation and any violation of the Bipartite Settlement would lead to violations of conditions of service under Section 9A of the I.D. Act, and there will be unrest in the banking administration.

25. As pointed out, the management cannot itself take a decision without entering into a bipartite settlement. Rules are to be framed for the pay fixation and the weightage of the employees in due consultation with unions. Whatever circular that have been issued from time to time were issued as per the bipartite settlement and its conditions. As the time of conducting the first and second test through the workman was within 50 years of age but on account of the cut off date of appointment he had no eligibility for the test. For the third test he had crossed the age of 50 years and became ineligible. On a scrutiny of the guidelines and the circular referred to above it is clear that the workman had not reached eligibility to appear for the test held on 1-8-85 and for the 2nd and 3rd tests he had crossed the age of 50. The Rules made through circulars have binding effect on both sides. The workman stated that two juniors were promoted on the basis of the circular dt. 7-5-86, whose details are not given. It is not clarified whether they were appointed earlier or later to the workman. Those junior employees

were not made as parties to the dispute. The workman raised the dispute in 1999 while his alleged right was affected in 1985. There are laches on his part which he failed to explain. The promotion is not automatic. Unless the workman gets through written and oral tests he cannot claim for the promotion. When the management did not permit the workman for the test he could not question the action allowing him to sit for the examination pending the dispute. An employee who is affected of his right had to take timely action. At a belated stage after retirement it is superfluous to claim deemed promotion with consequential benefits of promotion. The learned counsel for the petitioner has placed reliance upon the following decisions which are not relevant in the context of the case, and the facts are not similar to the facts in the instant case viz.,

- (1) State of Uttar Pradesh & Others, in the Supreme Court of India (Civil Appeal No. 1100 of 1985 dt. 13-8-1993, 1993-II LLN Page 501.—U.P. Intermediate Education Act, 1921.—Appellant Possessing minimum qualification, namely, Teachers certificate in Home Science prescribed for the post of L.T. Grade teacher on the relevant date when vacancy occurred—Heads, appellant was eligible for promotion on relevant date as L.T. Grade Teacher Appellant granted deemed promotion to L.T. Grade Teacher—High Court order in holding to the contrary quashed.
- (2) Rajapan Nair-Vs. State of Kerala and others.—In the High Court of Judicature Karala 1985 I.L.L.N. Ratio held :—If for no fault of his promotion to Government servant is delayed and it is given to him later with retrospective effect from the date on which it was due, the Government servant is naturally entitled to restoration of the benefit which he has lost on account of his conduct or laches. It is only proper that the Government should restore to him all that is lost by way of Salary or other emoluments.
- (3) Chingole (H.S.) and other Vs. Superintending Engineer and others. In the High Court of Judicature, at Bombay 1988, II.

L.L.N.—Promotion—Denied without sufficient reason—Effect Deemed date of promotion and actual date of promotion—employee is entitled to difference in salary for the period between the two dates.

- (4) State of Bihar and Dr. Braj Kumar Mishra and others Ranchi University Ranchi vs. Dr. Braj Kumar Mishra & others (2000) (1) LLN Page 66 (S.C.).—Held for the lapse of commission, respondent incumbent cannot be penalised—order of High Court declaring respondent, promoted from the date he became eligible is not illegal—However, the Supreme Court clarified that the order should not be taken as a precedent.
- (5) Bir Singh Kadian and others, Petitioners-vs. State of Haryana & Another, Respondents (1994 LAB. I.C. Page 2353).—Promotion—Order granting it with retrospective effect—employees not permitted to work on side higher posts—would still be entitled to refixation of their pay, retirement benefits and grant of arrears of Salary—principle of 'no work no Pay' would not apply since it was the employers who did not permit them to work on higher posts. Promotion—Grade of-with retrospective effect—Arrears of salary—cannot be refused merely because employee was unable to work on higher post.

26. In the result, an award is passed holding that the action of the management State Bank of India Tirupathi Region is justified in not allowing Sri P. Subrahmanya Sharma re-employed ex-serviceman to appear for the promotion test during 1985 as legal. The claim is dismissed and there is no order as to costs.

Dictated to the Shorthand writer, transcribed by him corrected by me and given under my hand and the seal of this Tribunal on this the 18th day of June, 2001.

SYED ABDULLAH, Industrial Tribunal-I
Appendix of Evidence

Witness Examined for
the Petitioner :

P.W1.—P. Subrahmanya Sharma.

Witness Examined for the Respondent :

M.W1.—K. Balakotaiah.

Documents marked for the Petitioner :

Ex. W1.—Circular regarding giving weightage to the Ex-servicemen re-employed in public sectors workers fixation of pay dated 28-1-83.

Ex. W2.—Circular No. 88 issued by the S.B.I. dt. 6-6-84.

Ex. W3.—Promotion for office middle manager Grade-II dt. 7-8-86.

Ex. W4.—Promotion orders to M.M.G.S. II w.c.f. 1-11-92.

Ex. W5.—Letter issued to W.W1 by the Branch Manager dt. 1-7-95.

Ex. W6.—Letter issued by the Chief Manager to all Branch Managers regarding eligibility to officiate in J.M.G. Position.

Ex. W7.—Circular letter No. (PER) 28 regarding ex-serviceman re-employed in public sector Banks etc., weightage for the purpose of promotion out of cadre.

Ex. W8.—Circular No. 2/90 issued by the All India Ex-Servicemen Bank Employees Federation dated 2-11-1990.

Documents marked for the Respondent Management :

Ex. M1.—Circular No. 109 regarding Clerical and Cash Department dt. 7-8-1985.

Ex. M2.—Circular No. 56 regarding Clerical & Cash Department promotion officers grade in J.M.G. 1988 dated 1-8-1989.

Ex. M3.—Circular No. 23 regarding clerical & Cash Department promotion to J.M.G.I. dated 26-3-93.

नई दिल्ली, 30 जुलाई, 2001

का.आ. 2159— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अन्तर्गत में निहित औद्योगिक विवाद में औद्योगिक अधिकरण—I, हैदराबाद के संघट को

प्रकाशित करती है, जो केन्द्रीय सरकार को 27-07-2001 को प्राप्त हुआ था।

[स.एल-12012/47/99-आई.आर. (बी I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2001

S.O. 2159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 27-7-2001.

[No. L-12012/47/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri Syed Abdullah, B.Sc., B.L., Industrial Tribunal-I.

Dated : 18th day of June, 2001

Industrial Dispute No. 35 of 1999

BETWEEN

The President,
All India Ex-Servicemen Bank Employees' Federation (A-P, Unit),
Regd. No. 10 of 1979, having its Head Office at B-30, Manak Vihar, P.O. Tilak Nagar, New Delhi-18 and Regional Office at D. No. 24-1-4A, Sambamurthy Road, Ramanagaram, Vijayawada-3.

..Petitioner

AND

The Regional Manager,
State Bank of India,
Region-III, Zonal Office,
Renigunta Road, Tirupathi,
Chittoor District.

...Respondent.

APPEARANCES :

Sri N. Rushendra Reddy, Advocate—for the Petitioner.

Sri B. G. Ravindra Reddy, Advocate—for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its letter No. L-12012/47/99/IR(B-I) invoking Sub-section (1) and Sub-section (2)(A) of Section 10 of the Industrial Dispute Act, has referred the dispute for adjudication between management of Tirupathi Region and its Ex-Service employee in

respect of the issues referred to in the schedule to the reference which is as under.

"Whether the action of the management of State Bank of India/Tirupathi Region in not stepping up of pay of Sri P. Subrahmanyam Sharma, Pre-1978 re-employed Ex-Serviceman w.e.f. 1-9-78 as per Ministry of Finance/Government of India Orders dated 28-1-1983 as protection of pay is justified? If not, to what relief the workman is entitled to?"

2. After the appearance of the parties they have filed their respective pleadings. The president of the Ex-servicemen Bank's Employees Federation filed the claim statement which is stated in brief.

3. The aggrieved workman herein had joined the service of the respondent-bank as clerk-cum-cashier on 19-1-76 against reserved vacancy of ex-serviceman on a minimum starting pay of Rs. 190 per month inclusive of 2 advanced increments of Rs. 10 (Total Rs. 20 for his degree qualification, with D.A. of Rs. 307-80, thus with a gross total of Rs. 496-80 per month. As per rule sanction of two additional increments for the degree qualification to be ignored at the time of pay prefixation when ex-servicemen were re-employed and the same to be readded after pay refixation is made. On that basis starting pay to be worked out as follows:

(a) Rs. 190/- Minus 2 (Degree Increments)	Rs. P.
D.A. at 165%	— 275-40
D.A. at 165%	— 275-40
	445-40

Last pay drawn in Defence Service as per L.P.C

	Rs. P.
(b) Basic Pay	— 291-00
Classification Pay	— 37-50
Good Service Pay	— 4-00
Dearness Allowance	— 60-00
	392-50

Since the workman had joined in the bank on 9-1-76 the old formula of protection of gross salary i.e., paid allowance was previously in the bank, and last drawn total pay and allowance was Rs. 392.50 were muchless than the initial starting pay and allowances in the bank was Rs. 445 he did not get any chance for refixation of Pay. Subsequently the earlier formula of pay protection was changed as protection of pay w.e.f. 1-9-78 to all re-employed ex-servicemen as per the guidelines issued by the Ministry of Finance which was published vide circular No. 49-85 dated 22-10-85. The Pre-extracts i.e. 1-9-78 and re-employed ex-serviceman working in the nationalised bank have represented to Government of India that the later formula of 'Protection of pay' made available to the

post on 1-9-98 entrants of re-employed ex-servicemen is much advantageous to them, than that was available to pre entrants 1-9-98. The Government has considered the same and issued orders vide letter No. F-10149/84 (SET) dated 25-8-87. The workman through a letter dated 5-9-87 requested the management for refixation of the pay but a reply was sent denying the said protection. So a representation dated 6-2-86 was given to the bank/management which was also rejected. Therefore as per the circular 40/87 dated 25-8-87 his pay is to be refixed as follows:

Date	Military Basic Pay	Comparing pay in Bank
1-9-78	Rs. 332.00	Rs. 325.00
	Add 1 stage	20.00
		345.00
	Add increments of	
	9-1-77	Rs. 20.00
	9-1-78	Rs. 20.00
		385.00
	Add two increments of degree Rs. 20/-	
	Rs. 25/-	Rs. 45.00
		430.00

4. The workman sought his pay to be stepped up as on 1-9-78 by giving one additional increment by means of circular 40/87 and all his junior employees are in advantageous position by getting one additional increment. The bank did not co-operate in the conciliation moved before the conciliation officer. Hence prayed to adjudicate the dispute.

5. The respondent Bank filed the counter and the averments are as under:

The Petition is not maintainable either on law or on facts of the case.

6. Petitioner is put to strict proof of the allegations made in the claim. The petitioner federation is not a recognised union as such the dispute raised is not maintainable. Consequent to the review made by the Government of India in pursuance of the representations received with regard to fixation of pay to Ex-servicemen who are re-employed in public sector banks, the bank vide circular No. PR 40/87 dated 25-8-87 issued instructions in consonance with the guidelines given by the Government of India vide F. No. 10/49/84/SET(B), dated 10-6-86. The rationale in issuing the circular is to ensure that the last drawn pay of ex-service employee to be protected and that the junior employees whose last drawn pay was same. Para (3) of the above referred circular gives an option to ex-serviceman who had joined in the bank, prior to September, 1978 to choose the new fixation formula, in which case, their pay will be refixed w.e.f. 1-9-78 as if they were fresh entrants in bank service. The workman opted for the above fixation formula had drawn pay of Rs. 332.50 when he was in defence service which

is equivalent to Rs. 345 P.M. in the new fixation formula. As he was drawing pay of Rs. 365 P.M. as on 1-9-78 which was more than the earlier pay, the same was not disturbed. Had it been refixed as per the service formula, it would have been Rs. 345 P.M. only so workman cannot have any grievance at all and the said formula which is more beneficial to him. Hence the claim is liable to be dismissed on the principle of estoppel.

7. The point for consideration is whether the workman is entitled to the stepping up of pay as claimed for?

8. During the enquiry the workman examined himself as WW1 and marked documents Ex. W1 to W3. He reiterated the factual aspects made in the claim statement. Ex. W1 is the appointment letter, Ex. W2 last pay drawn salary certificate of Rs. 392.50 P.M. drawn by him in Army, Ex. W3 is the circular issued by the Government of India Ministry of Finance for refixation of pay by adding one increment have been filed in support of his claim.

9. On the side of the management the Chief Manager was examined as MW1 and he denied the claim for stepping of pay, much less loss of monetary benefits in the pay fixation. He further deposed that as Ex. serviceman W.W.1 had drawn a basic pay of Rs. 332.50 and on the basis of Ex. W4 Circular, his pay had to be fixed in the scale of Rs. 345.00 as on 1-9-1978. But as on 1-9-1978 W.W.1 was actually drawing Rs. 365.00 per month towards the pay. As he was drawing more than the last pay drawn on that date, he could not get any benefits by means of Ex. W4 circular. At page 4 of the counter, the details of the pay drawn is shown and that during the period from 1-9-1978 to 1-1-1988 the workman at no point of time had drawn any less pay contrary to Ex. W4 circular. So the workman is not entitled to any benefit as claimed by him.

10. The crux of the dispute is that the workman herein as ex-serviceman on re-employment joined in the Bank service on 9-1-1976, his pay had to be refixed taking into account the last pay drawn at Rs. 332.50 w.e.f 1-9-1978 on the basis of pay protection formula and that it cannot be drawn lesser pay than the junior who joined later in service to him.

11. Whereas the Respondent's stand is that as per the guidelines issued by the Government of India Ex. W3, which was adopted in the circular No. 40/87 dt. 25-8-1987 (Ex. W4) the pay of the workman is very much protected and since he joined in service prior to September, 1978 and he having opted new pay fixation formula, treating him as a new entrant in the bank's service as on 1-9-1978 taking his last pay of Rs. 332.50 drawn in Defence Service. The equivalent pay scale was at Rs. 345.00 per month in the post of Clerk-cum-Cashier and as on 1-9-1978 he was drawing Rs. 365.00 per month so he could not get any benefit much less his pay had to be disturbed necessitating rectification. Neither there is any contravention of Ex. W4 circular in protecting the last drawn scale or that any junior employee[drawing any higher pay scale than him,

12. To resolve the dispute and to appreciate the contentions it will be appropriate to set out Ex. W3 Guidelines issued by the Government of India, which are adopted in Ex. W4 circular No. 45/87. Ex. W3 guidelines reads as follows :

“Subject.—Ex-Servicemen re-employed in Public Sector Banks/financial institutions fixation of pay.

Sir,

I am directed to refer to this Department letter No. 2/8/78 SCT (B) dated 28th January, 1983 on the above subject advising public sector banks and financial institutions, inter alia, that for the purpose of fixation of pay of ex-serviceman re-employed by them (a) protection may be given to total emoluments i.e., pay plus D.A. instead of only pay last drawn by the ex-servicemen before their retirement from armed forces if they joined banks before 1-9-78 and (b) the basic pay drawn in the armed forces (instead of Pay plus D.A.) may be protected for the purpose of pay fixation on re-employment in banks services on or after 1-9-78.

2. Representation have been received that according to formula as at (a) above, the ex-servicemen who joined banks on or after 1-9-78 get the benefits of pay fixation on re-employment which are far more advantageous than those available to the ex-servicemen who joined the banks before 1-9-78.

3. Further, the pay scales in the banks have been revised with effect from 1-7-83, the date from which the revised pay scales in the banks have become effective as a result of Fourth Bipartite Settlement. This has necessitated review of the formula for pay fixation.

4. These issues have been considered carefully by the Government and the following decisions have been taken :

(i) The Banks may invite Options from the pre 1-9-78 ex-servicemen entrants to the banks service to exercise fresh option to come over to the post 1-9-78 pay fixation formula in which case their pay will be re-fixed, with effect from 1-9-78, as if they were fresh entrants to the bank's service. No arrears on account of re-fixation of pay will, however, be admissible to such optees.

(ii) With effect from 1-9-83, the pay fixation of re-employment of ex-servicemen in the banks would be through protection of the basic pay plus D.A. drawn by them at the time of their release from the armed forces. The figure of pay plus D.A. admissible to the bank will be fixed with reference to this protection and the

relevant stage of the basic pay in the scale will be determined after deducting D.A. admissible in the banks from the figure protected."

Ex. W-4 circular issued in pursuance of Ex. W3 reads as follows :

"The Ex-servicemen who joined in the banks service on or after July, 1983 in the third Bipartite Settlement, pay scale made on the basis of protection of pay drawn in the armed forces or at the stage where new basic pay plus dearness allowance last drawn by them in the armed forces, whichever is higher. The servicemen who joined the Bank between July, 1983 and September 17, 1984 and were given the fitment under the 3rd Bipartite Settlement their pay would be refixed in the above manner, but if as a result of such refixation, their salary (Pay + D.A.) was reduced, the recovery of such excess payment for the period July 1, 1983 to September 17, 1984 would be waived.

The Revised instructions are as under :

- (i) With effect from 1-7-1983, the pay fixation on re-employment of ex-servicemen in the Banks would be through protection of the basic pay plus Dearness Allowance drawn by them at the time of their release from the armed forces. The figure of pay plus Dearness Allowance admissible in the Bank will be fixed with reference to this protection and the relevant stage of the basic pay in the scale will be determined after deducting Dearness Allowance admissible in the the Bank from the figure protected.

In other words, the pay fixation of ex-servicemen re-employed in the Bank's service on or after 1-7-1983 should be made on the basis of protection of basic pay and dearness allowance last drawn by them in the Armed forces and pay in the bank fixed at a stage where pay plus dearness allowance in the army would correspondent to that in the Bank.

- (ii) If the pay fixation of ex-servicemen re-employed in the Bank between 1-7-1983 and June 10, 1986 has been made on the basis of earlier formula and consequently excess payment has been made due to retrospective effect of 4th Bipartite Settlement, the recovery of the excess payment made upto 17-9-1984 may be waived.
- (iii) The Bank may invite options from pre-September 1, 1978 (i.e. the date of effect of 3rd Bipartite Settlement, from which date the fitment formula for ex-servicemen was revised to 'protection of Pay' from earlier formula of 'protection of pay + D.A.) ex-servicemen entrants to the Bank's service to exercise fresh option to come over to the post 1-9-1978 pay fixation formula in which case their pay will be re-fixed with effect from 1-9-1978 as if they were fresh entrants to the Bank's service. No arrears

on account of re-fixation of pay will, however, be admissible to such optees. This will come into force from June 10, 1986."

12. Ex. W2 is the last pay drawn certificate of the workman in Defence Service under which he was drawing Rs. 332.50 per month inclusive of D.A. and other allowances. Following the Guidelines of Ex. W3 and Ex. W4 the pay of the workman was fixed at Rs. 345.00 per month. The workman when he joined as a Cashier on 9-1-1976 his basic pay was fixed at Rs. 345.00 per month. As per the guidelines of Exs. W3 and W4, his pay is to be protected as on 1-9-1978 as he joined as a new entrant in service of the Bank. The rationale in issuing Exs. W3 and Ex. W4 is to ensure that the last pay drawn of an Ex-Servicemen on re-employment had to be protected and that the junior employee who joined subsequent to such employees after 1-9-1978 if he draws more than the pay of the ex-servicemen, the same is to be equalised by refixing his pay as if he had joined as a new entrant w.e.f. 1-9-1978. Necessarily option is to be given by such an Ex-Serviceman. Undisputedly the workman had exercised his option for re-fixation of pay as a new entrant on 1-9-1978. If refixation has to be taken into consideration as on 1-9-1978, his last pay drawn in Defence Service which was Rs. 332.50 has to be taken into consideration. On account of his two years service in the Bank, he was already drawing Rs. 365.00 per month as on 1-9-1978. The very purpose and object of Ex. W4 circular is to see that the Ex-Servicemen cannot draw lesser pay than what he was drawing in Defence Service and that of his junior employees who joined subsequent to him may not draw higher pay than him. In case and if there is any anomaly exists in the basic pay of the Ex-Serviceman with the pay of his junior employees it is to be refixed by stepping up with the pay scale of junior employee. The details of the pay structure of the workman shown in the counter at page 4 reproduced herein under gives a clear idea of the pay drawn by the workman as on 1-9-1978 for considering whether any refixation was required in his pay as on 1-9-1978.

Basic pay as per Military discharge certificate	Corresponding Basic pay (as if he is fresh entrant as on 1-9-1978)	Present Basic Pay
Rs.	Rs.	Rs.
Rs. 332.50 as on 1-9-1978	345.00	365.00
On account of graduation	385.00	405.00
Increment 9-1-1979	405.00	430.00
Increment 9-1-1980	430.00	455.00
Increment 9-1-1981	455.00	485.00
Increment 9-1-1982	485.00	515.00
Increment 9-1-1983	515.00	545.00
Revised 1-7-1983	930.00	990.00
Increment 1-1-1984	990.00	1,055.00
Increment 1-1-1985	1,055.00	1,125.00
CATB		
Part-I 8-5-1985	1,125.00	1,195.00
Increment 1-1-1986	1,195.00	1,280.00
Increment 1-1-1987	1,280.00	1,375.00
Increment 1-1-1988	1,375.00	1,470.00

the workman was drawing Rs. 405.00 inclusive of graduation increment while so as per Ex. W4 circular he has to get only Rs. 385.00 per month and he further stated that as on 1-9-1978 the workman was taken as a new entrant in the Bank's service fixing his basic pay at Rs. 365.00 per month. He denied of wrong fixation in the pay by showing Rs. 7.00 less for each month and on account of it there is a financial loss all the while right from his appointment. Further, he denied the suggestion that his basic pay scale is to be stepped up from Rs. 405.00 to Rs. 430.00 per month w.e.f. 1-9-1978 in terms of Ex. W3 letter. He also denied the suggestion that there is a deficit of Rs. 25.00 in the pay scale as pointed out.

13. In the entire pleadings and in the evidence, the workman has not pointed out any single instance as to who are the junior employees joined subsequent to him i.e. after 1-9-1978 are drawing pay exceeding Rs. 405.00 per month so that this pay is to be stepped up at Rs. 430.00 per month w.e.f. 1-9-1978 much less that there is any anomaly in the pay scale that his last drawn pay is not protected by fixing his pay at Rs. 365.00 per month w.e.f. 1-9-1978. M.W1 in his cross examination categorically clarified the doubts that were raised by the workman as to the alleged financial loss caused to him as per the pay scale allowed to him.

14. It is a well mark rule under fundamental rules or under service rules that stepping up of pay would arise between the same employee of the same cadre if a junior is drawing higher pay than the senior which necessitates for refixation of the pay on par with the pay of junior employee.

15. On a careful analysis of the factual aspects with the evidence on record, with reference to Exs. W3 and W4 pay fixation formulas, it is clear that the pay protection has been done without prejudice to the rights of the workman and there is nothing on record to show that any of the junior employees are drawing higher pay than the workman as on 1-9-1978 or any disparity exists in the pay scale which requires any rectification or refixation. For the aforesaid discussions and the reasons given supra, the contention of the workman that the Management has not protected his pay is neither proved to be correct nor that the pay drawn by him is found to be incorrect.

16. In the result, an Award is passed holding that the Management of State Bank of India, Tirupathi Region is justified in not stepping up of pay of Sri P. Subramanyam Sharma. Pre-1978 re-employed Ex-Serviceman w.e.f. 1-9-1978 as per Ministry of Finance Government of India Orders dated 28-1-1983 as his last pay drawn has been protected. There is no order as to costs.

Dictated to the Senior Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 18th day of June, 2001.

SYED ABDULLAH, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined
for the Petitioner :

Witnesses Examined
for the Respondent :

W.W.1 P. Subramanayam Sharma

M.W. 1 K. Balakotayya.

Documents marked for the Petitioner:

Ex. W1 9-1-96—Appointment order issued to W.W. 1.

Ex. W2 —Last Pay Drawn Certificate.

Ex. W3 10-6-86—Circular of the Ministry of Finance, New Delhi regarding fixation of pay of Ex-Serviceman re-employed in Public Sector, Banks and Financial Institutions.

Ex. W4 25-8-87—Circular of the Ministry of Finance, New Delhi regarding fixation of pay of Ex-servicemen re-employed in Public Sector Banks and Financial Institutions.

Ex. W5 9-9-87—Representation submitted by W.W1 to the Branch Manager, S.B.I. Madanapalli regarding fixation of pay.

Ex. W6 6-2-88 —do—

Ex. W7 15-2-89 —do—

Ex. W8 18-2-88—Reply given by the Branch Manager, Madanapalli enclosing the work sheet.

Ex. W9 3-2-88—Reply given by the Branch Manager, Madanapalli to WW1.

Ex. W10 7-2-88—Reply given by the Branch Manager, Madanapalli to W.W1.

Ex. W11 2-4-1988—Circular of the Bank regarding Ex-Servicemen re-employed in the Public Sector Banks fixation of pay and security.

Ex. W12 25-5-92—Circular of the Bank regarding ex-servicemen re-employed in the Public Sector, Banks and fixation of pay.

Ex. W13 11-10-92—Representation given by the All India Ex-Servicemen in Bank Employees Federation to the Asst. General Manager SBI Reg III Tirupathi regarding pay fixation of Ex-Servicemen Sri P. Subramanyam Sharma (W.W1).

Ex. W14 25-8-87—Xerox copy of conciliation failure report of A.L.C.(C), Vijayawada.

Documents marked for the Respondent:

NIL

नई दिल्ली, 30 जुलाई, 2001

का.आ. 2160— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार करार वैश्य बैंक लिमिटेड के प्रबंधन के संबद्ध नियो-जकों और उनके कर्मचारों के बीच, अनबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, चेन्नई के पंखाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-07-2001 को प्राप्त हुआ था।

[सं. एल-12012/310/2000-आई. प्रार. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 50th July, 2001

S.O. 2160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Karur Vysya Bank Ltd. and their workman, which was received by the Central Government on 27-7-2001.

[No. L-12012/310/2000-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHENNAI

Monday, the 25th June, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 75/2000

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between Shri A. Dhilbasha and the Management of Karur Vysya Bank Ltd., Karur.)

BETWEEN

The General Secretary,
Karur Vysya Bank Employees Union,
Karur. . . I Party/Claimant

AND

The Chairman,
Karur Vysya Bank Ltd.,
Karur. . . II Party/Management

APPEARANCES :

For the Claimant—Sri D. Hariparanthaman
V. Ajoy Khose and P. Vijendran, Advocates.

For the Management—M/s. T. S. Gopalan and
Co. Advocates.

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-12012/310/2000-IR(B-1) dated 26-9-2000.

This matter came up before me for final hearing on 31-5-2001. upon perusing the Claim Statement,

Counter Statement and other material papers on record, and the documentary evidence let in on the side of the II Party/Management only and upon hearing the argument of learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Government for adjudication by this Tribunal is as follows :—

“Whether the punishment imposed to Shri A. Dhilbasha of Puduchatram Branch by the Management of Karur Vysya Bank is legal and justified? If not, to what relief is the workman entitled?”

On receipt of this reference, this industrial dispute has been taken on file of this Tribunal as Industrial Dispute No. 75/2000. On receipt of the notice from this Tribunal, both the parties entered appearance through their respective counsel and filed their respective Claim Statement and Counter Statement.

2. The Industrial Dispute between the parties is briefly as follows :—

The I Party/Claimant Union (hereinafter referred to as the Petitioner) is espousing the cause of the workman Sri A. Dhilbasha in the concerned dispute. The concerned workman was appointed by the II Party/Management (hereinafter referred to as Respondent as a clerk in 1983 in its branch at Smalpatu. Shri Abdul Majid is the father of the concerned workman. Sri Anwar Basha, a lecturer in Alagappa Arts College, Karaikudi and Sri A. Akbar Basha are elder and younger brother respectively of Sri A. Dhilbasha. His younger brother has been running a cycle and spare parts shop in the name of Akbar Cycle Mart at Kaveripattinam. He had studied only upto VIII Standard and also a deaf person. Therefore, the concerned workman extended his help to Akbar Basha, as a brother in making some correspondent on behalf of his brother Akbar Basha during holidays and whenever he was free. Except making such help, the concerned workman had no connection or involvement whatsoever in the trade or business of his brother Akbar Basha in Akbar Cycle Mart. He extended his help upto 1991 till he was residing at Kaveripattinam. Thereafter the concerned workman shifted his residence from Kaveripattinam to Krishnagiri. So he could not even extend his help as before. Under such circumstances, the Respondent had issued a charge sheet dated 12-10-95 alleging that the concerned workman had placed orders with M/s. Royal Cycle Mart for the supply of cycle and cycle spares to M/s. Akbar Cycle Mart and that he had not made the payment for the supplies made by them inspite of his assurance to pay, that he was also actively involved and associated in the business of M/s. Akbar Cycle Mart, that due to the non-payment of the dues by him to M/s. Royal Cycle Mart Sri Sampath @ Shanmugasundaram had filed a complaint against him and his two brothers M/s. Akbar Basha and Anwar Basha u/s. 409, 420 and 120(b) of IPC,

that he had contracted pecuniary obligation with the customer of a bank, that he has given room for police complaint and that he has acted in a manner unbecoming of a bank employee. He was charged under clause 19.5(A) and 19.5(J) of the Bipartite Settlement. Shri Dhilbasha had submitted a detailed explanation dated 21-10-95 and denied the charges. In that explanation he has stated that no business involvement or association whatsoever with Akbar Cycle Mart and that he had no transaction with Royal Cycle Mart. He had also pointed out that he was not provided with the copy of the complaint said to have been made by M/s. Royal Cycle Mart and requested the Management to provide the copy of the same. He had also requested not to proceed with the enquiry, till the charge sheet was filed by the police. Without considering his explanation and request, the II Party by an order dated 18-11-95 decided to hold an enquiry and appointed the Enquiry Officer. The II Party without considering the representations of the concerned workman proceeded with the enquiry. In the enquiry, the Management has examined one witness Sri Sampath @ Shanmugasundaram and exhibited 18 documents as Management's Ex. M1 to 18. On the side of the workman his younger brother Akbar Basha, owner of Akbar Cycle Mart, father Sri Abdul Majid and one Sri Rajagopal, Village Administrative Officer of Gundalapatti and another Sri Ravi were examined as Ww's 1 to 5 and 15 documents were exhibited as D1 to D15. The enquiry was not conducted in a fair and proper manner and in accordance with the principles of natural justice. In the enquiry, the workman was not given fair and reasonable opportunity to defend him effectively. The defence representative submitted a copy of the order dated 1-11-96 exonerating Mr. Anwar Basha, the elder brother of concerned workman from the similar charge issued based on the similar complaint given by Mr. Sampath of Royal Cycle Mart. The Enquiry Officer submitted his findings dated 9-1-97 and the same was communicated to the concerned workman by an order dated 17-1-97. The concerned workman submitted his reply on 14-12-97, to the findings of the Enquiry Officer stating that the Enquiry Officer's findings was perverse, biased and one sided and requested to the Disciplinary Authority to set aside the same and to exonerate him from the charges. But the Disciplinary Authority had issued a show cause notice dated 25-3-97 and proposed to dismiss the concerned workman from service. In the personal hearing held on 28-4-97, the concerned workman and the defence representative made a submission that the Disciplinary Authority passed a final order dated 30-8-97 and communicated to the workman concerned by a letter dated 30-8-97 informing the workman about the imposed punishment of reduction in basic pay by five stages for each charge and the punishment was to run concurrently. Subsequently, by an order dated 8-9-97 in a corrigendum to final order was issued by the Disciplinary Authority by which the punishment was modified as a reduction in basic pay by two stages for each charge and it was ordered that the punishment shall run separately. The Workman concerned preferred an appeal but the appeal was rejected and the findings of the Enquiry Officer and the punishment imposed by the Disciplinary Authority

were confirmed. Then the concerned workman requested the Petitioner Union by a letter dated 30-2-98 to do the needful by raising a dispute. As the Management was not willing for any amicable settlement, the Petitioner Union has raised this industrial dispute. The punishment of reduction in basic pay of the concerned workman by two stages for each of the two charges imposed by the II Party Management is illegal, arbitrary and unjust and liable to be set aside.

3. The II Party Management, the Respondent herein, in their Counter Statement had opposed the averments in the Claim Statement of the Petitioner Union. It is briefly as follows :—

The Workmen of the Respondent bank are required to devote their whole time and attention only to the work of the bank and they should not either directly or indirectly engaged themselves in any trade or business. Further no workmen shall have any dealings with the constituents of the bank. The workmen are also required not to indulge in excessive borrowings. By a letter dated 18-4-95 one M/s. Royal Cycle Mart, Salem complaining to Respondent that one of the staff of the branch in Samalpatti branch of the Respondent was running a shop in Kaveripattinam in the name of Akbar Cycle Mart and that they have supplied him cycle parts and accessories for the value of Rs. 3,88,072 and that it was proposed to initiate legal proceedings for recovery of the amount. A memo was issued to the concerned workman inviting his attention to the complaint of Royal Cycle Mart calling upon him to explain how he got himself involved in trade or business outside the scope of his employment. The concerned workman gave a reply stating that the complaint was baseless and devoid of any truth. Later the Royal Cycle Mart informed the Respondent Management that they have filed a complaint against the concerned workman and his brother and forwarded a copy of FIR. Then charge sheet was issued to the concerned workman and enquiry was conducted. On consideration of the evidence let before him, the Enquiry Officer held the charges levelled against the concerned workman were proved and submitted his report on 9-1-97. After the concerned workman made his representation, a personal hearing was held on 28-4-97 and the Disciplinary Authority has passed an order dated 30-8-97 imposing the punishment. The findings of the Enquiry Officer are based on sound reasoning and they should not be disturbed. Those findings cannot be characterised as perverse. It has come out in the enquiry that Akbar Cycle Mart was owing huge amount to Royal Cycle Mart and that the concerned workman was actively involved in carrying on the business in the name of Akbar Cycle Mart, therefore, the concerned workman was indebted. There was adequate material before the Enquiry Officer to come to the conclusion that the concerned workman was carrying on the business. Admittedly Royal Cycle Mart was a constituent of Salem Shevapet Branch of the Respondent Bank and its one of the staff members of the bank were to owe a huge amount to the customer, it will certainly affect the image and reputation of the bank and thereby it is the conduct prejudicial to the interest of the bank. The punishment awarded to the concerned workman Sri A. Dhilbasha is perfectly justified and the same should be upheld.

Hence, an award may be passed rejecting the claim of the Petitioner.

4. When the matter was taken up for enquiry, by the consent of the counsel on either side, the xerox copies of the documents filed on the side of the Management were marked as Ex. M1 to M53. Neither party examined any witness on their respective side. No documentary evidence also has been let in on the side of the I Party/Union. The learned counsel on either side have advanced their respective arguments.

5. The point for my consideration is—

“Whether the punishment imposed to Shri A. Dhilbasha of Puduchatram Branch by the Management of Karur Vysya Bank, Karur is legal and justified? If not, to what relief is the workman entitled?”

Point :—

Though it is averred in the Claim Statement that the enquiry was not conducted in a fair and proper manner and in accordance with the principles of natural justice and in the enquiry, the workman was not given fair and reasonable opportunity to defend him effectively, while advancing argument the learned counsel for the I Party/Union has not pointed out as to how the principles of natural justice have been violated by the Enquiry Officer in conducting the enquiry and how the enquiry has not been conducted in a fair and proper manner and how the workman was not given fair and reasonable opportunity to defend him effectively. Ex. M1 to M53 of the documents marked as Exhibits on the side of the II Party/Management with the consent of the learned counsel for the I Party/Union. Ex. M36 to M41 have been filed as proceedings of the enquiry conducted by the Enquiry Officer. Ex. M42 is the report of findings of Enquiry Officer. A perusal of these records, clearly show that the concerned workman, who is the charge sheeted employee, was given fair and proper opportunity in the domestic enquiry conducted by the appointed Enquiry Officer and the delinquent employee has taken part in the enquiry fully along with his defence counsel and has cross examined the Management witness in detail and has examined three witnesses inclusive of himself as DW1 to 3 apart from marking 15 documents as Ex. D1 to D15. So, it cannot be said that the delinquent employee, the concerned workman Dhilbasha was not given fair and proper opportunity in the domestic enquiry and the Enquiry Officer has violated the principles of natural justice in conducting the domestic enquiry. It is argued by the learned counsel for the Petitioner Union that the only witness examined on the side of the Management as MW1, the person belong to Royal Cycle Mart is only an interested witness and the reliance made by the Enquiry Officer on his evidence is only a biased and perverse one. This argument of the learned counsel for the Petitioner union is incorrect because on the basis of concrete documentary evidence and the unimpeached oral evidence of the Managerial witness, the Enquiry Officer has given his finding that the charges levelled against the charge sheeted employee has been proved, as it is seen from the enquiry proceedings filed into Court. Further, the evidence of

MW1 cannot said to be an interested testimony, since he is the person concerned with the Royal Cycle Mart. With regard to the business transaction by the Akbar Cycle Mart with the Royal Cycle Mart, he only can speak about the transaction and the documents, letters written by the delinquent employee on behalf of Akbar Cycle Mart. It is admitted that the letters have been written by the delinquent employee as a business correspondence. It is the argument of the learned counsel for the Petitioner Union that those letters were written by the delinquent employee only to help his brother, who is doing the business and who is not well educated and that the delinquent employee has not directly involved in that business and that the Enquiry Officer presumes that the delinquent employee involved in the business directly when it does not disclose the delinquent employee's direct involvement in the business and it can at best the case of suspicion. This argument of the learned counsel for the Petitioner Union cannot be accepted as correct because these admitted documentary evidence go to show that this delinquent employee had something to do with the business of Akbar Cycle Mart which had business transaction with the Management witness's Cycle Mart at Salem. So it cannot be said that without any evidence at all the Enquiry Officer has come to the conclusion about the delinquent employee's involvement in the business of the Akbar Cycle Mart with Royal Cycle Mart, which is a constituent of Respondent Bank branch at Salem. So under such circumstances, it cannot be said that the Enquiry Officer has presumed things without any basis and his findings are perverse and biased and his non-acceptance of evidence given by DW as close relative's evidence cannot be considered as incorrect. So under such circumstances, it is clearly seen that the findings of the Enquiry Officer has been supported by evidence. There is a document to show that the Royal Cycle Mart has brought to the notice of the bank that the huge balance of amount is due to them from the employee Sri Dhilbasha through his business connection with Akbar Cycle Mart of Kaveripattinam. So under such circumstances, the findings given by the Enquiry Officer based upon acceptable legal evidence let in before him in the enquiry cannot be said to be perverse and without any evidence. So, the findings given by the Enquiry Officer supported by evidence cannot at all be interfered by this Tribunal or disturbed. Further, this is not a case wherein this Tribunal can interfere with the punishment imposed by the Disciplinary Authority for the proved misconduct of the delinquent employee invoking jurisdiction under Section 11A of the Industrial Disputes Act. So under such circumstances, the imposing of punishment by the Disciplinary Authority, after giving sufficient opportunity to the delinquent employee is also cannot be interfered with as an irregular or improper one. In view of these it can be easily concluded that the punishment imposed to Sri A. Dhilbasha of Puduchatram Branch by the Management of Karur Vysya Bank cannot said to be illegal or unjustified. So, no relief can be granted to the concerned workman. Thus, I answer the point accordingly.

6. In the result, an award is passed holding that the action of the Management of Karur Vysya Bank in imposing punishment on Sri A. Dhilbasha of Puduchatram branch is legal and justified and hence the

concerned workman is not entitled to any relief. No cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day, the 25th June, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:

On other side : None.

DOCUMENTS MARKED :

For I Party/Claimant : Nil.

For the II Party/Management :

Ex. No.	Date	Description
M1	12-10-95	Xerox copy of charge sheet No. PAD/11/95 issued to the Petitioner.
M2	21-10-95	Xerox copy of reply of the Petitioner to the said chargesheet
M3	10-4-95	Xerox copy of the letter from Royal Cycle Mart Salem to the Management.
M4	29-12-88	Xerox copy of letter from Akbar Cycle Mart, Kaveripattinam to Royal Cycle Mart, Salem.
M5	27-7-89	Xerox copy of letter issued by the Petitioner for Akbar Cycle Mart, Kaveripattinam to Mr. Sampath of Royal Cycle Mart, Salem.
M6	2-7-90	Xerox copy of letter issued by the Petitioner for Akbar Cycle Mart, Kaveripattinam to Mr. Sampath of Royal Cycle Mart, Salem
M7	13-2-91	Xerox copy of letter from the Petitioner to Mr. Sampath
M8	5-3-91	Xerox copy of letter from the Petitioner to Mr. Sampath.
M9	10-6-91	Xerox copy of letter from the Petitioner to Mr. Sampath
M10	Nil	Xerox copy of letter from the Petitioner to Mr. Sampath.
M11	Nil	Xerox copy of letter from the Petitioner to Mr. Sampath
M12	Nil	Xerox copy of letter from the Petitioner to Mr. Sampath.
M13	Nil	Xerox copy of letter from the Petitioner to Mr. Sampath
M14	23-9-88	Xerox copy of letter from Akbar Cycle Mart Kaveripattinam, placing orders for new cycles.
M15	Nil	Xerox copy of the letter of the Petitioner to Mr. Sampath
M16	Nil	Xerox copy of the letter of the Petitioner to Mr. Sampath
M17	2-9-95	Xerox copy of FIR No. 1527/95 of Salem Town Police Station, Crime Branch filed by Royal Cycle Mart, Salem.
M18	Nil	Xerox copy of salary certificate of the Petitioner issued by the Management.
M19	7-2-88	Xerox copy of Partnership deed of Akbar Cycle Mart, Kaveripattinam.
M20	8-11-94	Xerox copy of letter of Royal Cycle Mart, Salem to The Principal, Alagappa Arts College.
M21	23-11-94	Xerox copy of letter of Royal Cycle Mart, Salem to Akbar Cycle Mart, Kaveripattinam.
M22	15-3-95	Xerox copy of letter of Royal Cycle Mart, Salem to the Petitioner.
M23	3-2-95	Xerox copy of letter of Royal Cycle Mart, Salem to Akbar Cycle Mart, Kaveripattinam.
M24	16/17-11-88, 7/9-12-88, 20/25-1-89, 30-1-89 2-2-89	Xerox copy of letter of Royal Cycle Mart, Salem to Akbar Cycle Mart, Kaveripattinam.
M25	1-11-94	Xerox copy of letter of Royal Cycle Mart, Salem to Akbar Cycle Mart, Kaveripattinam.
M26	3-7-92	Xerox copy of letter from the Management to Smt. S. Kokilambal, Salem.
M27	4-6-92	Xerox copy of letter from Smt. S. Kokilambal, Salem to the Management.
M28	27-6-92	Xerox copy of letter from Smt. S. Kokilambal, Salem to the Management.
M29	6-8-88, 7-10-88, 28-1-89, 8-2-89, 14-9-92, 18-9-92, 15-10-92	Orders form of Akbar Cycle Mart addressed to various industrial at various places.
M30	1-4-95	Xerox copy of letter of Mr. Abdul Majid to Supreme Court of India.
M31	Nil	Xerox copy of letter from Akbar Cycle Mart, Kaveripattinam to Circle Inspector of Police.
M32	6-2-95	Xerox copy of letter from Abdul Majid to District Police Officer, Dharmapuri.
M33	25-8-96	Xerox copy of certificate of V.A.O. Gundalapatti Issued in favour of the Petitioner.
M34	18-11-95	Xerox copy of order No. PAD/DP/280/95 Initiating and appointing enquiry officer on the Charge sheet to Mr. Dhilbasha.
M35	12-1-96	Xerox copy of notice of Enquiry Officer.
M36	1-12-96	Copy of enquiry proceedings.
M37	24-4-96	Copy of enquiry proceedings.
M38	25-4-96	Copy of enquiry proceedings.
M39	5-9-96	Copy of enquiry proceedings.
M40	19-9-96	Copy of enquiry proceedings.

- M41 4-11-96—Copy of enquiry proceedings.
- M42 9-1-97—Xerox copy of findings of the Enquiry Officer.
- M43 17-1-97—Xerox copy of letter from Disciplinary Authority in the Petitioner.
- M44 14-2-97—Xerox copy of letter from defence representative to the Disciplinary Authority.
- M45 25-3-97—Xerox copy of show cause notice No. PAD/4/97 Issued to the Petitioner by the Disciplinary Authority.
- M46 2-4-97—Xerox copy of letter No. PAD/5/97 from the Disciplinary Authority to the Petitioner.
- M47 11-4-97—Xerox copy of letter No. PAD/7/97 from the Disciplinary Authority to the Petitioner.
- M48 28-4-97—Xerox copy of proceedings of the proposed Punishment hearing.
- M49 30-8-97—Xerox copy of final order No. PAD/7/97 issued By the Disciplinary Authority.
- M50 8-9-97—Xerox copy of corrigendum for final order No. PAD/7/97 issued by Disciplinary Authority.
- M51 21-1-97—Xerox copy of appeal filed by the Petitioner to the Appellate Authority.
- M52 15-12-97—Xerox copy of letter No. PAD/11/97 of the Appellate Authority enclosing his order on appeal.
- M53 1-11-96—Xerox copy of order exonerating Mr. Anwar Basha from the action taken by him in the College.

नई दिल्ली, 30 जुलाई, 2001

का.आ. 2161:— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अन्तर्गत में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद-I के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/07/2001 को प्राप्त हुआ था।

[सं.एल-1/012/19/99-आई.आर. (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2001

S.O. 2161—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman which was received by the Central Government on 27-7-2001.

[No. L-12012/19/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BETWEEN THE INDUSTRIAL TRIBUNAL-I AT HYDRABAD

PRI SUNT :

Sri Syed Abdullah B.Sc., B.L.,
Industrial Tribunal-I.

Dated : 18th day of June, 2001

Industrial Dispute No. 37 of 1999

BETWEEN

The President, All India Ex-Servicemen Bank Employees' Federation (A.P. Unit), Regd. No. 10 of 1979, having its Head Office at B-30, Manak Vihar, P.O. Tilak Nagar, New Delhi-18 and Regional Office at D. No 24-1-4A, Sambamurthy Road, Ramanagaram, Vijayawada-3. .. Petitioner.

AND

1. The Chief General Manager,
State Bank of India, Local Head Office,
Banks' Street, Hyderabad.

2. The Regional Manager,
State Bank of India, Region III,
Zonal Office, Labbipet,
Vijayawada. .. Respondents.

APPEARANCES :

Sri N. Rushendra Reddy, Advocate for the Petitioner.
Sri B. G. Ravindera Reddy, Advocate for the Respondent.

AWARD

Government of India, Ministry of Labour, New Delhi, by its letter No. L-12012/19/99-IR(B-I) invoking sub-section (1) and sub-section 2(A) of Section 10 of the I.D. Act has referred this dispute for adjudication between the management of State Bank of India, Vijayawada Region and its ex-service employee in respect of the issues referred to in the schedule to the reference which is as under :

"Whether the action of the management of State Bank of India, Vijayawada Region in not allowing Sri M.A. Khan re-employed ex-serviceman to appear for the promotion test conducted during 1985 is legal ?
If not what relief the workman is entitled to ?

2. After the appearance of the parties they have filed their pleadings.

On behalf of the workman Sri M.A. Khan, the President of the employees Union filed the claim statement and in brief the averments are as under :

The aggrieved workman Sri M. A. Khan had joined the Respondent Bank as Clerk-cum-Cashier on 18-11-1977 and he was deprived of his promotional chances in not allowing him to appear for the promotion test conducted during 1985. The respondent had taken the plea that the workman had not put in the requisite service and age limit totally ignoring the orders of the Ministry of Finance, Government of India, Defence Services weightage given to those ex-servicemen re-employed in the banks for the purposes of promotion and career advancement. The management also has taken the plea that the so called settlement arrived at with the recognised unions after 4 years of the issuance of the orders by the Government on the subject and as such the settlements has no relevance to the issue.

3. The workman had served in Indian Armed Forces i.e. Indian Air-Forces for about 15 years from August 1961 to August 1976

4. The Respondent-Banks administration is being guided and controlled by the Central Government i.e. by the Secretary, Ministry of Finance, New Delhi. The Bank is obliged to follow the guidelines and directions meticulously. The State Bank of India Central Office Bombay was advised by the Ministry vide OMF No. 2/8/78 (SCT(B), dated 28-1-83 which reads as under.

"If certain number of years services are prescribed as minimum eligibility criteria for promotion from one cadre to another. Rules in this regard may suitably be modified to give weightage to ex-servicemen on the basis of their services in the defence forces". The first respondent who is the promoting authority had convened and conducted a promotion test for OJMGD-I vide circular No. 109 dated 7-8-85 with the criteria of cut off service seniority for eligibility for general category of employees as on 31-12-75. The above test was conducted on 22-9-85, and about 650 employees were promoted in the said posts w.e.f. 1-8-85. Even though the workman herein who had eligibility in all respects for appearing for the OJMGD-I promotion test conducted on 22-9-85, he was denied with the said opportunity by not allowing him to write the said examination. He was also not communicated the reasons as to why he was not permitted to write the said examination as such it is violative of the principles of the Natural Justice. The juniors were already promoted. Thereby the workman was put to mental trauma, harassment and humiliation while working the clerical cadre only. The criteria of service seniority fixed by the Bank for the above test was that all those clerks and cashiers who have joined the service on or before 31-12-75 are eligible to write the test. The workman herein had joined in the bank on 18-11-77 as re-employed ex-serviceman's post. As per the instructions of the Ministry of Finance referred to above the workman should have been given weightage of service based on his length of service in the Defence service. The Government orders were published through circular No. 88 dated 8-6-84 giving its effect for implementation as such the management ought to have extended the weightage of 15 years of service to the workman which was given a go bye illegally, so as to deny opportunity to the workman to appear for the test in 1985.

5. Subsequently the Government of India had issued another 'OM' letter dated 28-1-83 on the same subject modifying the earlier orders to the effect that "weightage is to be given for the purpose of out of cadre promotion in the ratio of one year for every 5 years of service put in the armed forces subject to a maximum of 2 years in total service". Ex-Servicemen employees recruited against the reserved vacancies will be entitled to the benefit of weightage of service for promotion only once during the entire service in the Bank. The Bank had published a circular dated (PFR) 28/1-4-87 and by means of it the workman herein got 2 years of weightage. And he was qualified to appear for the promotion test. By the time (i.e. 1985) the above test was conducted the workman was only 44 years of age. Though he was eligible he was deliberately victimised and denied the opportunity by the management arbitrarily. A large number of officer promotees of 1-8-85 batch were further promoted to the middle management grade also i.e. MM Grades Scale-II w.e.f. 1-11-95 by holding oral interviews.

6. The respondent-management have entered into an agreement with the recognised union of the Bank on 12-2-87 in terms of Section 9(A) of the I.D. Act to afford 2 years of weightage to ex-servicemen re-employed. In the banks and the same was published in bank's circular No. 28 dated 1-4-87 having its implementation effect. The second time publication of the said orders after a belated period of 4 years vide Circular dated 1-4-87 without making any reference to its earlier publication on the same matter dated 8-6-84 tantamounts to malafides on the part of bank authorities which was done with a view to deny the privilege extended to ex-servicemen re-employed in the bank. The bank is well aware of the Government's instruction on the subject since 28-1-83. The action of the management to avoid promotional chances to the workman is a gross injustice and unconstitutional. It also amounts to, altering of Section 9(A) of the I.D. Act in changing the workman's service condition and entering the settlement with the union 4 years after the issuance of the Government orders which also amounts to violation of the provisions of I.D. Act. The Workman in his letter dated 31-1-96 addressed to consider the eligibility in allowing him to write the promotion test of OJMGD-I dated 11-2-96 but his request was turned down by the second respondent vide letter dated 11-4-96 informing that he is above 50 years of age and as such not eligible. As per the policy laid down by the bank senior most employees are allowed to officiate in higher capacity whenever a temporary vacancy of OJMGD-I arises. The workman herein was allowed to officiate to said post in Kattapeta 2497 GI/2001—9

Branch Vijayawada till February 1996 until he reached the age of 52 years, while so 2nd respondent abruptly informed not to officiate the said post by giving a circular LHO(CDO) (PER) 22/96/8-96 that the employees who have reached 50 years of age are deemed to have exhausted of the chances for promotion to OJMGD-I and so they should not be allowed to officiate in higher capacity which amounts to victimisation and harassment.

7. The workman represented his grievances before ACL Central Vijayawada, but the respondent had not cooperated in settling the dispute. The Central Government order have retrospective effect from the date of origination i.e., 28-1-93 on publication by the bank vide its staff circular 88 dated 8-6-84. Even if 2 years weightage is extended, the cut-off date for general category being 31-12-75, the eligibility to write the said test stands as up to 31-12-77 in respect of the workman. The bank could have extended 2 years weightage to him as a re-employed ex-serviceman when such benefit being allowed to SC/ST category of employees at the time of conducting test in 1985 and if at all they had any clarification to make or being in-convenienced to extend 15 years of service benefit as per earlier Government orders they could have included the name for promotion test and results could have been kept in abeyance in a sealed cover till receipt of clarification. No such efforts were made by the management. The junior employees who are within 50 years of age were promoted to the disadvantage of the workman over riding his seniority. Hence it is prayed to direct the respondents to promote the workman as an officer in Junior Management Grade-I w.e.f. 1-8-85 in the form of deemed promotion and fix him in the subsequent stage of promotion, otherwise he will suffer loss and hardship.

8. The respondent filed the counter and briefly stated the averments are as under. The dispute is untenable both of facts and under law, so it is liable to be dismissed in limine which was raised after an abnormal and unexplained delay. Though the workman joined as clerk-cum-cashier on 18-11-77 under Ex-Servicemen Quota, the promotion to the post of OJMGD-I is not a matter of routine. Those having requisite number of years of service and not crossing the age of 50 years and fulfilling all other requisite conditions are only eligible to appear for the written test. Those who come out successfully in the written test only allowed to appear for the interview basing on the over all performance of the candidate and depending upon the number of vacancies, in that year, promotion will be effected. Similarly for MMGS-II also the same procedure was followed. The Ministry only issues guidelines which are recommendary in nature but the same are not administrative orders muchless the same become service conditions applicable to the staff and officers of the bank, unless the same are adopted by the bank after fulfilling the requisite conditions and following the procedure as provided under provisions of I.D. Act.

A letter dated 28-1-83 issued by the Ministry of Finance containing inter alia guidelines of fixation to pay to the ex-servicemen re-employed in public sector banks, which guidelines are not in consonance with the spirit of the instructions as interpreted by the workman. It cannot be gain said that such guidelines do not per se becomes the service conditions of the bank employees unless such guidelines are adopted by the bank after fulfilling all the requisite conditions and procedure required in that regard as per the provisions of the I.D. Act Awards and bypartriare settlement governing the terms and conditions of service applicable to the work staff and also the service rules as applicable to the officers. On receipt of the guidelines from the government of India and after obtaining necessary administrative clarifications from the Ministry the matter was discussed with the All India State Bank of India Staff Federation the recognised union comprising of substantial majority of about 98 per cent of work forces as its members on several occasions and ultimately a settlement was reached only on 17-2-87 and basing on the said settlement, circular letter No. (PER) 28 dated 1-4-87 was issued inter alia extended the services weightage to ex-servicemen for appearing for promotion test. The instructions under circular were given prospective effect VIZ 1-4-87 as the retrospective effect to such instructions will result in hardship to the other workmen, staff and may unsettle the promotion tests conducted earlier. For the test conducted on 22-9-85 the cut-off date was 31-12-1975. The criteria was that of the persons working as clerk-cum-cashier and had joined the services on or

before 31-12-75 and those who are not over 50 years of age as on 1-8-85 were only eligible, for those test as on that date there were no extant instructions requiring the extension of services weightage to ex-serviceman. The petitioner was found not eligible to write the test as he had joined in the bank on 18-11-77. The service conditions of employees cannot be changed unilaterally and it cannot be done only after the following due procedure, particularly in view of Section 9(A) of the I.D. Act. As regards the test held on 25-4-93, eligibility criteria was that the person who had joined on or before 31-12-75 and not crossed the age of 50 years were only eligible. Vide Circular letter (PER) 23 dated 26-3-93. As the petitioner was born on 1-5-42 he was not eligible to write the said test. As regards the test conducted on 27-8-89 the cut-off date service was 31-12-73 and even after extending of service weightage of 2 years as provided for, vide circular letter (PER) 28 dated 1-4-87, the claimant was not eligible to write for the said test as he was appointed on 18-11-77 and the 2 years of weightage can permit the date of his appointment to be reckoned as 18-11-75 which is not within the cut-off date. Circular letters (PER) 28 (PER) 56 dated 1-4-87 and 1-8-89 respectively the enclosed annexures may read as part of the counter. Vide circular No. 88 dated 6-6-84 related to fixation of pay and other allowances to ex-servicemen which has nothing to do with the promotion of OJM. There was neither any discrimination nor victimisation as alleged by the workman. As the workman had crossed 50 years of age he was not eligible to write for promotion test for OJMGD-I held on 11-2-96. Further as per the bank's extended instructions and guidelines employees over 50 years of age should be deemed to have exhausted of the chances for promotion to OJMG and consequently should not be permitted to officiate in such position. Vide Circular No. LHO/CDO(PER)22/96-97 dated 26-8-96. There are no merits in the dispute. Hence prayed to dismiss the claim.

9. The point for adjudication is whether the workman is entitled to the reliefs as claimed for?

10. In order to prove the claim, on behalf of the workman the organising secretary of the Union was examined as WW1 who is also an aggrieved workman in another dispute I.D. 59/99 which was also espoused by the union for redressal of the grievances.

11. The gist of WW1's evidence is as under : Mr. M. A. Khan Ex. serviceman was appointed on 17-11-77 as clerk-cum-cashier during 1985. A test for junior management-I was conducted and for which post the cut-off date of seniority was fixed as 31-12-1975. As M. A. Khan put in 15 years of defence service he could have been given weightage and allowing him to sit for the test by following the circular No. 88 dated 6-6-84 which is Ex. W1. About the weightage, the Government of India made certain modifications by issuing a circular dated 1-1-87 which is Ex. W2. By the time of conducting the said test in 1985 Mr. M. A. Khan was 44 years, and even then he was not allowed to write the test, so the management may be directed to treat him as an officer in junior management Grade-I w.e.f. 1-8-85 in the form of deemed promotion with all attendant benefits. So also for the subsequent promotion of middle management scale-II w.e.f. 1-11-95 should be given to him. One Mr. Jinka Chimmaya, M. A. Qaderi Mohammed were promoted as per circular dated 7-5-86. Ex. W3 is the list of the concerned promotees.

12. On the side of the management, the Manager Personal HRD was examined whose evidence is as under : To have a promotion from one cadre to another one must have qualified services and a fixed by the bank. Those who are qualified will be allowed to sit for the written test and after qualifying in it, the candidate will be called for interview. Basing on over and all performance in written and oral test the candidate will be selected subject to the availability of the vacancies. In promotion of MNGS-II the same procedure will be followed. In 1983 the Finance Ministry issued guidelines for fixation of pay and service weightage etc., of ex-service which circular is Ex. W6. In 1984 there was a settlement with regard to weightage for fixation of ex-servicemen employees and it was done after discussion with recognised unions and in pursuance of it Ex. W2 circular was issued. OJMG-I test was conducted for the first time on 22-9-85 and in this regard the bank issued Ex. W5 circular fixed the criteria. The workman was not eligible for the test as per Ex. W5 circular. The second test for the same post was

conducted on 27-8-87 and for this Ex. M1 circular was issued on 1-8-89. As per the eligibility the employee should have been appointed on 31-12-73 and should not have crossed 50 years as on 1-8-88. As the workman was appointed on 18-11-77 and after reckoning 2 years weightage basing on Ex. W2 circular he was not become eligible for the qualifying test of OJMG-I. Again third test was conducted on 25-4-93 for which Ex. M2 circular dt. 26-3-93 was issued fixing the qualifications and as per Ex. M2 the employee should have been appointed on or before 31-12-75 and should not have crossed 50 years of age as on 1-8-92 and since the workman had crossed the age he was not eligible for it. Again on 27-8-96 the bank had issued Ex. M3 circular disqualifying the employees who had crossed 50 years of age to officiate the said post temporarily.

13. The crux of the dispute is that the workman who is an ex-serviceman on re-employment working as Clerk-cum-Cashier though was eligible to appear for the test of Junior Management Grade-I which was held and conducted as per circular letter No. 109, dt. 22-9-85, he was deprived of the opportunity without any reason what so ever which is violative of the principles of natural justice. Consequent to denial of the opportunity he lost the next promotional post of bank as officer middle management Grade-II w.e.f. 1-11-95. According to the workman since he had 15 years of defence service he is entitled for the weightage of service and as per the amended circular Ex. W2 dt. 1-4-87 he is entitled for 2 years of weightage. Had he been allowed for the test, by virtue of his high academic qualification and experience he would have passed the test and since he was deprived of the opportunity of promotion, a direction to be given that the workman is a deemed promotee to the post of junior Grade-I w.e.f. 1-8-85 with all attendant benefit and also for the subsequent promotional post w.e.f. 1-11-95.

14. Whereas the management has taken the stand for the promotional post of Clerk-cum-Cashier is OJM Grade-I and one must have a qualified service and age prescribed by the bank, and having eligibility to sit for the qualifying examination i.e. (Written Test). After qualifying in the Written Test the candidates will be qualified for the interview and basing on the over all performance in the written and oral test, the candidate will be selected depending on the availability of vacancies. For the next promotion of MWGS-II the same procedure to be followed. As per the 1983 guidelines issued by Ministry of Finance in respect of pay, service weightage etc., covered by Ex. W6 of the employees, the management after holding discussion with the recognised All India State Bank of India Staff employees federation a settlement dt. 17-2-87 was entered into. Pursuant to the said settlement the bank had issued a circular which is Ex. W2 regarding the weightage of service to the ex-service employees making them eligible for the promotional post of OJM-I. A test was conducted for the first time on 22-9-85 for which Ex. W5 circular was issued prescribing certain qualifications under which a candidate should have been appointed in the service on or before 31-12-75 and his age should not exceed 50 years as on 1-8-85. Since the workman was appointed on 18-11-77 he had no eligibility as per Ex. W5 circular. Subsequently the 2nd test was held for the same post on 27-8-89 covered by Ex. M1 circular dt. 1-8-89 prescribing the qualifications that the employees should have been appointed on or before 31-12-73 and should not have crossed 50 years of age as on 1-8-88 since the workman was appointed on 18-11-87 in spite of getting 2 year of weightage as per Ex. M2 circular he was not eligible for the qualified test of OJMG-I. Again for the third time, the test was conducted on 25-4-93 for which Ex. M2 circular dt. 26-3-93 was issued fixing qualification under which an employee should have been appointed on or before 31-12-75 and his age should not exceed 50 years as on 1-8-92. By the date of third test the workman had crossed 50 years age and since M2 circular stipulated that one should not cross 50 years as on 1-8-92 he was not eligible for all the three tests. Further as per Ex. M3 circular dt. 16-8-96 the employees who have crossed 50 years of age by the date of the circular cannot also officiate the post of OJMG-I.

15. To resolve the dispute with reference to the factual aspects, the evidence let in by the parties read with documents which are the guidelines issued by the Government of India, Ministry of Finance and Circulars viz., Ex. W1 to W6 and M1 to M3 are to be examined carefully analysing it by interpreting the guidelines and circulars.

16. Undisputedly the workman as an ex-serviceman on re-employment was appointed as Clerk-cum-Cashier on 18-11-77. Ex. W6 is a guidelines dated 28th January 1983 issued for fixation of pay of ex-service employee working in Public Sector Banks. Para 4 of it is relevant in this dispute which is to the effect that "In certain number of years of service are prescribed as a minimum eligibility criteria for promotion from one cadre to another Rules in this regard may be suitably modified to give weightage to ex-servicemen on the basis of their services in defence forces".

17. No doubt the workman had 15 years of defence service but he cannot claim entire service as weightage. The guidelines itself had made it clear that rules may be suitably modified. For making rules or modifying it, the management cannot independently act it and it had to consult the recognised and registered employees union of the State Bank employees federation and thereby the management had to discuss it with the employees union and ultimately entered into a settlement on 17-2-87 and followed by it Ex. W2 circular came into effect for giving weightage to ex-service employees. Para (1) of the circular is relevant which is to the effect that "Weightage is to be given for the purposes of out of cadre promotions in the ratio of 1 year for every 5 years of service put in the Armed Forces subject to a maximum of 2 years in total service. No pro-rata weightage should be given to ex-servicemen employees." Therefore it is clear that after completion of 3 years of service in the post of clerk-cum-cashier as per Ex. W2 circular an ex-service employee is entitled for 2 years additional service weightage. As result of which his service is to be counted from 18-11-79 onwards for the purpose of Seniority and for future promotion.

18. The claim of the workman is that for OJMD-I post, test was conducted on 22-9-1985 for which Ex. W5 circular was issued fixing qualification that the candidate should have been appointed on or before 31-12-75 and his age should not exceed 50 years on 1-8-85. In para 8 of the claim statement it is stated that the workman was aged 44 years by the time the test was conducted in 1985, while so he was not allowed and discriminated.

19. Ex. W5 circular is the basis to decide the question in issue. As per eligibility criteria of Ex. W5 (item II) that relates to service which is to the effect that the employee should have been appointed on or before 31-12-75. In case S.C. and S.T. employees by 31-12-77. Admittedly when the appointment of the workman itself was on 18-11-77, that he must put in a minimum of 3 years of service for getting 2 years of weightage. Even after getting weightage there was no possibility for the workman to have the eligibility as his appointment was not on or before 31-12-75. May be that on 1-8-85 the workman was 44 years of age but he was not eligible at all, as his appointment was after 31-12-75.

20. The second test was held on 27-8-89 for which Ex. M1 circular dt. 1-8-89 was issued in which the qualification prescribed are that the employee should have been appointed on or before 31-12-73 and should not have crossed 50 years of age as on 1-8-88. Obviously the workman was not eligible for second test as his appointment was on 18-11-77 and by adding 2 years of weightage of service after 3 years of regular service.

21. The third test was conducted on 25-4-93 for which Ex. M2 circular dt. 26-3-93 was issued prescribing qualifications under which the employee should have been appointed on or before 31-12-75 and his age should not exceed 50 years as on 1-8-92. As on 1-8-92, the workman had crossed the age of 50 years so he was not eligible.

22. Subsequently another circular M3 dt. 26-8-96 was issued clarifying that those employees who have crossed 50 years of age should be deemed to have exhausted the chances of promotion to the post of OJMD-I and consequently they should not be promoted to officiate in such positions.

23. The stronghold contention of the workman is that Ex. W6 guidelines issued by the Government of India the ex-service employees are given certain protection and the implementation of the orders were delayed for 4 years which has

adversely effected the prospects of him and other ex-service employees and taking into consideration that Ex. W6 has a overriding effect they are to be treated as promoted w.e.f. 1-8-85.

24. Whereas the contention of the respondent is that Ex. W6 guidelines are recommendatory in nature and the management cannot arbitrarily frame rules and fix the cut-off dates as eligibility criteria for promotion of the employees without entering into the bipartite settlement with All India Bank Employees Federation and any violation of the bipartite settlement would lead to violations of conditions of service under Section 9A of I.D. Act and there will be unrest in the Banking administration.

25. As pointed out, the management cannot itself take a decision without entering into a bipartite settlement. Rules are to be framed for the pay fixation and the weightage of the employees in due consultation with unions. What ever circulars that have been issued from time to time were issued as per the bipartite settlement and its conditions. At the time of conducting the first and Second tests, though the workman was within 50 years of age but on account of the cut off date of appointment he had no eligibility for the test. For the third test he had crossed the age of 50 years and became ineligible. On a scrutiny of the guidelines, and the circulars referred to above it is clear that the workman had not reached eligibility to appear by the date of 1st and 2nd test and for the 3rd test he had crossed the age of 50. The Rules made through circulars have binding effect on both sides. On behalf of the workman the General Secretary of the Union the Ex-service employees union gave evidence and he stated that two juniors were promoted on the basis of the circular dt. 7-5-86, whose details are not given. It is not clarified whether they were appointed earlier or later to the workman. Those two employees were not made as parties to the dispute. The workman did not give evidence in the case and no reasons are given for his non-examination. The examination of the aggrieved party is essential for the purpose of cross-examination so as to elicit the details of facts. Non examination is fatal to the case. The workman raised the dispute in 1999 while his alleged right was affected in 1985. There are laches on his part which he failed to explain. The promotion is not automatic. Unless the workman gets through written and oral tests he cannot claim for the promotion. When the Management did not permit the workman for the test he could not question the action allowing him to sit for the examination pending the dispute. An employee who is affected of his right had to take timely action. At a belated stage after retirement it is superfluous to claim deemed promotion with consequential benefits of promotion. The learned counsel for the petitioner has placed reliance upon the following decisions which are not relevant in the context of the case, and the facts are not similar to the facts in the instant case viz.,—

1. State of Uttar Pradesh & Others, in the Supreme Court of India (Civil Appeal No. 1100 of 1985 dt. 13-8-1993, 1993-II LLN 501.
U.P. Intermediate Education Act 1921,—Appellant Possessing minimum qualification, namely, Teachers Certificate in Home Science prescribed for the post of L.T. Grade teacher on the relevant date when vacancy occurred—Held, appellant was eligible for promotion on relevant date as L.T. Grade teacher Appellant granted deemed promotion to L.T. Grade Teacher—High Court order in holding to the contrary quashed.
2. Rajapan Nair -Vs.- State of Kerala and Others : In the High Court of Judicature, Kerala, 1985 I. LLN. Ratio : Held :
If for no fault of his promotion to a Government servant is delayed and it is given to him later with retrospective effect from the date on which it was due, the Government servant is naturally entitled to restoration of the benefit which he has lost not on account of his conduct or laches. It is only proper that the Government should restore to him all that is lost by way of salary or other emoluments.
3. Chincole (H.S.) and other Vs. Superintending Engineer and others. In the High Court of Judicature, at Bombay 1988 II LLN
Promotion—Denied without sufficient reason—Effect Denied date of promotion and actual date of promotion—Employee is entitled to difference in salary for the period between the two dates.

State of Bihar and Dr. Braj Kumar Mishra and others Ranchi University, Ranchi V. Dr. Braj Kumar Mishra & others [2000 (1) LLN/66(SC)].

Held, for the lapse of commission, respondent incumbent cannot be penalised—order of High Court declaring respondent, promoted from the date he became eligible is not illegal—However, the Supreme Court clarified that the order should not be taken as a precedent.

Bir Singh Kadian and Others, Petitioners vs. State of Haryana & Another Respondents (1994 LAB 1. c. 2353).

Promotion—order granting it with retrospective effect—Employees not permitted to work on said higher posts—would still be entitled to relaxation of their pay retiral benefits and grant of arrears of Salary—principle of 'no work no pay' would not apply since it was the employers who did not permit them to work on higher posts.

Promotion—Grant, of—with retrospective effect—Arrears of salary—cannot be refused merely because employee was unable to work on higher post.

26. In the result, an award is passed holding that the action of the management SBI/Vijayawada Region is justified in not allowing Sri M. A. Khan, re-employed ex-serviceman to appeal for the promotion test during 1985 as legal. The claim is dismissed and there is no order as to costs.

Dictated to the Shorthand Writer, transcribed by him, corrected by me and given under my hand and seal of this Tribunal on the 18th day of June, 2001.

SYED ABDULLAH, Industrial Tribunal-I

Appendix of Evidence

Witness Examined
for Petitioner :

WW1 P. Subramanyam

Witness Examined
for Respondent :

MW1 V. Sai Babu

Documents marked for the Petitioner/Workman

Lx. W1 6-6-84 Circular regarding weightage of Military Service.

Ex. W2 1-4-87 Circular regarding ex-service re-employed in Public Sector Bank weightage of service put in the Armed forces for the purpose of promotion out of cadre.

Ex. W3 7-5-86 Circular along with page 13 and 14 of the list.

Ex. W4 28-1-97 Promotion list of Staff to MMGS-II w.e.f. 01-11-1995.

Ex. W5 7-8-85 Circulars to conduct the Test for Promotion OJM-I.

Ex. W6 28-1-83 (enclosure of W1) guidelines issued as the Ministry of Finance Department of economic affairs regarding ex-service re-employed in public sector banks—fixation of pay.

Documents marked for the Respondent/Management

Lx. M1 1-8-89 Circular regarding prescribing qualifications for promotion.

Ex. M2 26-3-93 Circulars regarding prescribing qualification to the promotion to the post JMGS-I.

Ex. M3 26-8-96 Xerox copy of Staff circular regarding eligibility to officiate in JMG positions.

नई दिल्ली, 30 जुलाई, 2001

का.आ. 2162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेडुंगुडी बैंक लिमिटेड के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारियों के बीच अनुवध में निदिष्ट औद्योगिक

विवाद में औद्योगिक अधिकरण अलापुजा के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2001 प्राप्त हुआ था।

[सं. एल-12012/131/99—आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2001

S.O. 2162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Alappuzha as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Nedungadi Bank Ltd. and their workman, which was received by the Central Government on 27-7-2001.

[No. L-12012/131/99-IR(B-I)]

AJAY KUMAR, Desk Officer.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL : ALAPPUZHA

(Dated this the 16th day of June, 2001)

PRESENT :

Shri M. N. Radhakrishna Menon, Industrial Tribunal.

I. D. No. 39/1999(C)

BETWEEN

The Chairman, Nedungadi Bank Ltd., K. P. Kesava Menon Road, Head Office, Kerala, Kozhikode.

AND

The workmen of the above concern Sri. A. Raveendran Nair, Rakesh Nivas, East of Kalatickal Service Stn., Avalookkunnu, P.O. Alappuzha.

REPRESENTATIONS :

M's. C. K. Parameswara Panicker,
& C. V. Lumumba,
Advocate,
Alappuzha.

—For Management

Sri. R. Sankarankutty Nair,
Advocate,
Alappuzha.

—For Workman

AWARD

1. The Central Government has as per order No. L-12012/131/99/IR(B-I) dated 13-8-1999 referred this industrial dispute between the above parties for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Dispute Act, 1947 (14 of 1947). The issue referred for adjudication is the following :—

"Whether the action of the management of the Nedungadi Bank Ltd., in relation to their Alappuzha Branch in discharging Shri. A. Raveendran Nair, Clerk from his

service with effect from 30-4-1996 is justified? If not to what relief the workman is entitled to?"

2. This reference has arisen as follows :

Sri. A. Raveendrar Nair, the workman in this dispute was working as a Clerk in the Alappuzha Branch of the management Bank. While so, he was charge sheeted for certain misconducts as per the charge sheet dated 8-12-1994. To this, he submitted an explanation on 16-12-1994 denying the charge. This was not satisfactory to the management. Therefore the management has appointed Shri. G. Radhakrishnan Nair, an Officer of the Bank as Enquiry Officer to enquire into the charges and submit a report over the matter. Accordingly, the Enquiry Officer conducted an enquiry into the matter and submitted a report with the findings that the workman is guilty of the charges levelled against him. Based on this report, the management discharged him from the services of the Bank with effect from 30-4-1996. Aggrieved thereby, the workman raised an industrial dispute, which has culminated in the present reference.

3. The case of the workman is that the management charge-sheeted him as per their charge sheet dated 8-12-1994 alleging certain misconducts. He submitted a reply denying the charges and setting out the true state of affairs. But the management did not accept this explanation. They arranged an enquiry into the charges appointing an officer of the Bank as enquiry officer. The enquiry officer, after enquiry, submitted a report on 6-12-1996 with a finding that all the charges levelled against him are proved. The enquiry officer has violated all principles of natural justice and his findings are not supported by any legal evidence. The enquiry officer was biased and he was acting under instructions of the disciplinary authority. There was no evidence to make out the essential facts leading to the charges. Sri. John Thomas who was the customer and complainant was not examined in the enquiry. The case of the management is based on admission of guilt set out in his statement made to the manager of the management Bank. Even the management has no case that it amounts to admission. This is evident from the charge sheeting and conducting of enquiry by the management subsequently. The workman had given a blank paper to the accountant of the Branch to prepare a reply to another charge memo, which was misused and forged an admission. The enquiry officer has not properly applied his mind to the materials on record. The findings of the enquiry officer are perverse and unsustainable. Thus the enquiry is not legal and proper. Therefore, the workman has prayed for passing an order invalidating the enquiry.

4. The workman further submits that he has got 20 years of unblemished service in the Bank. Despite this, he was inflicted with the punishment of discharge from the services of the Bank. It amounts to victimisation. The management has not suffered any loss of money on their goodwill so as to impose a major punishment of this nature. The management has shown leniency to similarly placed Branch Manager and reappointed him in service. A different yardstick is adopted with regard to the workman. The punishment is shockingly disproportionate.

Therefore the workman prayed for passing an award setting aside his dismissal and reinstating him in service with all back wages and other attendant benefits.

5. The case of the management is that their actions are legal and proper and it does not call for any interference by this Tribunal. The enquiry conducted into charges levelled against the workman is legal and proper. The workman was properly charge sheeted based on sufficient materials at their disposal. Since the explanation to the charges levelled against the workman was not satisfactory, a domestic enquiry was arranged. The enquiry officer was not biased in any manner as alleged. He was acting independently and not under instructions from the disciplinary authority as alleged. The enquiry was conducted in full compliance with the principles of natural justice. The workman was defended by a senior lawyer and he was given all opportunities to defend his case properly. All aspects of the charges were made out by adducing proper evidence from the management side. Even though the customer concerned was not examined, it will not vitiate the enquiry. The facts leading to the misconducts were admitted in a statement submitted before the manager of the bank. This was not in response to any charge sheet. That is why he was charge sheeted and in view of his retraction from his earlier stand, an enquiry was conducted into the charges. There is nothing irregular in this regard. The Enquiry Officer has properly considered the materials in the enquiry and arrived at a bonafide conclusion that the workman is guilty of the charges levelled against him. Thus the enquiry is legal and proper with regard to the procedure as well as findings. Therefore, the management prayed for passing an order upholding the enquiry.

6. The management further submits that the punishment is also legal and proper. The post held by the workman is a confidential post. In the light of the proved misconducts, he cannot be trusted further and his continuance in service with result in irreparable loss and injuries to the employer as well as to the customer. The disciplinary authority has considered all the aspects of the matter and as a measure of sympathy, an order of discharge was passed instead of dismissal. Thus the punishment is not excessive or unjust in any manner. Therefore, the management prayed for passing an award upholding the punishment of discharge and rejecting the claims of the workman.

7. The workman has seriously assailed the domestic enquiry with regard to the procedure as well as the findings. Therefore I have tried the legality of the enquiry as a preliminary issue. At that stage, the enquiry file was marked as Ext. M1 and the matter was heard elaborately and a preliminary order was passed on 19-5-2001. As per the above order, I have held that the enquiry was proper with regard to the procedure as well as findings. In paragraphs 7 to 20 of the said order, I have dealt with the matter, which are extracted below for convenient reference.

"7. The point for determination is whether the enquiry conducted against the workman is legal and proper or not, with regard to the procedural aspects and the findings?"

8. The Point.—At this stage, I have to examine as to whether the procedure followed by the enquiry officer and the findings arrived at by him are legal and proper? I have scrutinised the Ext. M1 enquiry file meticulously. It is seen that the workman was properly charge sheeted and he was represented in the enquiry by Sri. T. D. Kavirajan, Advocate, Alappuzha. The workman has fully participated in the enquiry. Two witnesses were examined on the side of the management and they were elaborately cross-examined by the workman's counsel. The workman himself was examined as witness on his side. All requests made from the workman's side such as to cause production of documents for making out the defence etc. are favourably disposed by the enquiry officer. The workman was afforded every opportunity to effectively defend his case and the same was availed by the workman. Thus, I find that the enquiry is conducted in full compliance with the principles of natural justice and there is no procedural irregularity in this regard as alleged by the workman.

9. Next aspect to be considered is whether the findings of the enquiry officer are legal and proper from the materials on record.

10. Evidence in enquiry consists of oral evidence of MW1 and MW2 and WW1 and Exts. M1 to M9 and Exts. W1 to W5. Ext. M8 is the memo of charges levelled against the workman dated 8-12-1994, relevant portion of which runs as follows :—

“It has been brought to notice that some one had taken loose cheque leaf bearing “514039” from Alleppey branch and made out a cheque for Rs. 5,000 dated 28-9-94 to the Savings Bank A/c “5949” of Mr. John Thomas of the branch by forging his signature and got the cheque encashed on 28-9-1994. This was revealed on 14th November, 1994 when Mr. John Thomas visited the branch and verified the balance in his account. You were the Clerk who had accepted the cheque at the counter and, therefore, you were questioned in this regard. You then admitted that you had taken the loose cheque leaf, made out the cheque forging the signature of the account holder and with the help of a third party accomplice got the cheque encashed. You remitted the amount of the cheque on 15th November, 1994. Your actions are serious misconduct and, therefore, the following charges are framed against you.

1. You misusing your position of a staff of the branch, with dishonest intention stealthily removed loose cheque leaf No. 514039
2. With the cheque leaf stealthily removed by you, you fraudulently made out a cheque dated 28-9-1994 for Rs. 5,000 to the S.B. account “5949” of Mr. John Thomas, forging the signature of the account holder and with the dishonest intention to make

unlawful gains to you and wilful loss to the account holder got the cheque encashed through an accomplice of yours and appropriated the amount.

3. Your above actions are violation of the trust and confidence reposed in you.

4. By your above action, you exposed the Bank to the risk of the customer losing faith in the Bank which is highly detrimental to the interest of the Bank.”

11. Ext. M9 is the explanation of the workman dt. 16-12-1994, relevant portion of which runs as follows :—

“1. I have been serving our esteemed institution for the last 18 years with utmost loyalty and without having any occasion ever in my life to be charged with a case of fraudulence, cheating, defalcation of money or acting against the interest of the Bank.

2. I totally deny the charges alleged against me.

3. I have not made any admission of the charges alleged against me

4. I have not done any act so as to jeopardize the interest of the Bank nor to damage its fame.”

12. Since the charges were denied by the workman an enquiry was conducted into the said charges. Shri Krishna Iyer (MW1) has testified before the enquiry officer that Shri John Thomas, S.B. Account No. 5949 holder presented a cheque for Rs 25,000 on 14-11-94 for encashment and it was found that sufficient funds were not available there and it was informed to him accordingly. He was furnished the details of entries in the accounts also and then he complained that the withdrawal of Rs. 5,000 on 28-9-1994 was not made by him. He was shown the cheque presented on 28-8-1994 and then it was revealed that the said cheque was not issued by him. On verification of his specimen signature, it was found that there was difference in the signature between the specimen signature and on the cheque presented on 28th September, 1994 Sri Raveendran Nair was the Section Clerk who dealt with the cheque. Since he was absent on 14-11-1994, he was sent for and questioned about the irregularities. Then he made a statement before him. This was recorded by him and got signed by Sri Raveendran Nair. Said statement is Ext. M3 which runs as follows :—

13. MW1 was elaborately cross-examined by the counsel for the workman and none of his statements incriminating the workman is controverted in any manner.
14. Shri V. John Kurian, the accountant (MW2) has testified before the enquiry officer that when the MW1 questioned the workman on 14-11-1994, the workman admitted that he has taken out loose cheque leaf and forged the signature of John Thomas and withdrawn Rs. 5,000 with the assistance of a third person. Ext. M3 is the statement given by the workman before the MW1 in his presence. This statement is attested by him also. The workman remitted Rs. 5,000 on 15th November, 1994 in the account of John Thomas and Ext. M2 is the relevant pay in slip. This slip is written up by the workman himself. He was elaborately cross-examined by the counsel for the workman, but above evidence is not controverted in any manner.
15. Shri Raveendran Nair the workman involved in this case was examined as WW1 before the Enquiry Officer. In his testimony, all allegations made against him are denied and he is cross-examined by the presenting officer. But his evidence and explanations with regard to the allegation are not believable in the light of other cogent materials on record. After elaborately considering the evidence on record, the enquiry officer entered the finding of guilt. I have reappraised the evidence in the light of the materials on record and I also find that it does not deserve any intervention by me.
16. The main thrust of the charges as per Ext. M8 memo is that the workman has stealthily removed a loose cheque leaf with No. 514039 from the Bank and fraudulently made out a cheque for Rs. 5,000 dated 28-9-1994 as that of Sri John Thomas, S.B. Account holder with No. 5949 and withdrawn the said amount with the assistance of an outside and misappropriated the proceeds of it. In Ext. M3 statement of the workman extracted above, it can be seen that all essential aspects of the allegations are clearly admitted by the workman. Ext. M3 is attested by MW2 also. The workman has a case that he has entrusted a signed blank paper with John Kurian, Accountant of the Bank (MW2) to prepare an explanation to the charge sheet issued to him for unauthorised absence and MW1 and MW2 have conspired and made out Ext. M3 admission statement with this. This stand is too artificial to believe. It is not made out that 14-11-1994 was a due date for furnishing any explanation to any memo issued by the management. It was also not made out as to why he opted MW2 to prepare his explanation especially when he was not admittedly an office bearer of the union to which he belonged to. In Ext. M8 memo, all allegations constituting the charges are elaborately set out including his admission made on 14th November 1994. In Ext. M9 explanation, apart from denying the charges and the admission, he has not advanced any much explanation as to his admission made on 14th Nov., 1994 and it is at a later stage in the enquiry that he has come forward with such explanations. If he had a case that Ext. M3 was manipulated by MW1 and MW2, he could have complained about it before the higher authorities of the Bank. That is not done. It indicates that it is an explanation woven out for the purpose of his case without any bonafides.
17. It is the specific case of the management that pursuant to the undertaking of the workman made on 14-11-1994 as per Ext. M3, he has remitted Rs. 5,000 on 15-11-1994. Ext. M7 is the related pay in slip dated 15-11-94. Admittedly, it is prepared and signed by the workman even though he was on leave on 15-11-1994. His explanation is that it is the amount entrusted with him at about 9.30 A.M. on 15-11-1994 to be remitted to the Bank by the customer himself. He prepared the pay in slip and entrusted the amount and slip to the cashier Santhamma and left the Bank urgently to take his brother to hospital. There is no evidence on record to corroborate the above aspects of his evidence. Above explanations are manifestly worked upto wriggle out of the inconveniencing facts glaring at him. There is nothing unusual in employees of the Bank preparing pay in slips and remitting amounts in the name of account holder. But the conduct of the workman in the light of the totality of the incriminating circumstances on record, it has to be believed that the remittance of Rs. 5,000 was made by the workman which he has misappropriated from the S.B. Accounts of the customer. Thus there is overwhelming evidence on record which points to the guilt of the workman.
18. The counsel for the workman has very vehemently argued that the non-examination of the customer concerned is fatal. The evidence on record indicate that in view of the bitter incident, the customer has closed his account and left. In view of other cogent evidence on record, his non-examination is not fatal to the validity of the enquiry.
19. The evidence on record makes out that the workman has manipulated a cheque No. 514039 and stealthily withdrawn Rs. 5,000 from the S.B. Account No. 5949 of John Thomas and misappropriated the same. These are the essential elements of charges (1) and (2). The charges (3) and (4) are natural consequences emerging from the charges (1) and (2). Thus I conclude that the charges are made out in the enquiry and the findings of the enquiry officer in this regard are correct.
20. In the result, a preliminary order is passed upholding the enquiry with regard to the procedure as well as findings."
8. Next aspect to be considered is whether the punishment is just and proper. S 11A of the Industrial Dispute Act confers jurisdiction to this Tribunal

to interfere in punishments of this nature if it is satisfied from the materials on record that the punishment is not justified and substitute it with suitable other punishments or grant such other reliefs.

9. The counsel for the workman has vehemently argued that the punishment of discharge is not justified in the facts and circumstances of this case. He relied on the Supreme Court ruling in *Scooters India Ltd. Vs. Labour Court Lucknow* reported in 1989-I-LLJ-71 (Supreme Court) and argued that 'justice' shall be tempered with mercy and the errant workman shall be given one more opportunity to mend his ways and to become a disciplined employee. He has further relied on *State Bank of India Vs. Thomas Jose* and another reported in 2000-II-LLJ 1599 and argued that maximum leniency may be shown to the workman.

10. The counsel for the management refuted the above arguments and argued that the gravity of the solitary misconduct justifies punishment. Since the management has lost confidence in him, he cannot be reinstated. The public confidence is important in a banking institution. The reputation, goodwill and discipline of the Bank will be adversely affected if any further leniency is shown to him. The rulings cited by the counsel for the workman do not lay down that the workman is entitled to any leniency. Therefore the management's counsel prayed for passing an award upholding the punishment of discharge inflicted on the workman. I have considered the rival contentions of parties in the light of the materials on record and the rulings cited before me.

11. Since the counsel for the workman has heavily relied on the decision of Supreme Court in *State Bank of India Case, (2000-II-LLJ-1599)*, I am extracting the relevant paragraphs for convenient reference.

Paragraphs (2) & (3)

2. The first respondent was an employee of State Bank of India (appellant). He had joined as a Typist-cum-clerk in 1976. When officiating as Cash Officer in a branch of the Bank, he made a withdrawal of Rs. 3000 from the Savings Bank Account of a third party with the Bank. He did so by forging the signature of the account-holder on the withdrawal form. He appropriated the amount for his personal use. The external auditors of the Bank detected this and an inquiry was made. The first respondent admitted that he had withdrawn Rs. 3000 from the said account. A charge-sheet was issued to the first respondent wherein he again admitted his guilt. The enquiry officer found the charge against the first respondent proved. Consequent upon this finding, amounting to gross misconduct in terms of the Sastri Award and the Desai Award governing the Bank, the first respondent was dismissed from the Bank's service. His appeal was dismissed. An industrial dispute was raised. The Industrial Tribunal, acting thereon, found that the misconduct was proved but that the punishment of dismissal was too harsh. It therefore, ordered reinstatement, as a Typist-Clerk,

without back wages. The Bank filed a writ petition in the High Court of Kerala, impugning the Industrial Tribunal's award. The writ petition was dismissed. The appeal against that order was dismissed. The division bench of the High Court relied upon the judgment of this Court in *Scooters India Ltd. Vs. Labour Court, Lucknow AIR 1989 SC 149 : 1989 SUPP (1) SCC-31 : 1989-I-LLJ-71* and held that the Tribunal was right in affording an opportunity to the first respondent to reform himself and prove to be a disciplined and loyal employee.

- (2) In the aforesaid case, in a more or less similar circumstances, this court declined to interfere with the view taken by the Labour Court that an errant workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of *Scooters India Ltd.* There is, in our view a vital difference between an undertaking such as *Scooters India Ltd.* and the Bank. A bank deals with public moneys. Misappropriation by the employee of a bank is misappropriation of public moneys and must be treated very differently. Misconduct such as this cannot be treated as lightly as it has been done. We think that the appropriate order should at least have been of reinstatement without back wages plus a direction that the first respondent would not be entitled to any increments for a substantial periods with all the cumulative consequences of such an order. That is the order that we propose to pass.

12. It is pertinent to note that the Supreme Court has in the above case clearly distinguished the reformatory theory propounded in *Scooters India Case* in the context of Banks. In the above ruling, Supreme Court has not laid down as a proposition of law that a workman who committed misappropriation of funds of the customer deserves leniency and he shall be reinstated in service. The Supreme Court has in the particular facts and circumstances before them, suggested the punishment of reinstatement without back wages and with barring of ten increments. Therefore I am of the view that above ruling cannot be pressed into service for getting leniency and reinstatement in service.

13. The management establishment is a scheduled Bank. The public confidence is essential for the successful conduct of its business. The banking establishments are facing stiff competition in the changed economic scenario. It is paramount that the banking companies shall have honest and sincere staff to cope up with this situation. In view of the misconducts committed by the workman, a customer has closed his account in a half and left the Bank once and for all. The reputation and goodwill of the Bank is at stake. Even though the misconduct is solitary, it is too grave to be justified. The contention of the management that in the light of the proved misconducts they have lost confidence in him is sound and has to be accepted. I do not find any mitigating circumstance. So as to reduce the rigour of the proved misconducts. When the action is based on proved

misconducts, the complaint of victimisation is devoid of any substance. Thus the materials on record justify the punishment of discharge inflicted on the workman. When the punishment is found to be justified, no intervention under S.11A is called for. Therefore I have to sustain the punishment and I do so. In the result, an award is passed holding that the action of the management in discharging Shri. A. Raveendran Nair, Clerk from the service of Nedun-gadi Bank is justified and that he is not entitled to any reliefs.

(Dated this the 16th day of June 2001)

M. N. RADHAKRISHNA MENON, Industrial Tribunal.

APPENDIX

I.D. No. 39/99(C)

Witness examined on the side of the Management:
NIL

Witness examined on the side of the workman :
NIL

Exhibits marked on the side of the Management:

M1 : Enquiry proceedings (46 sheets) relating to the workman.

Exhibits marked on the side of the workman:
NIL

नई दिल्ली, 31 जुलाई, 2001

का.आ. 2163.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सर्वे रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण तमिलनाडु, चेन्नई-I के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-07-2001 को प्राप्त हुआ था।

[सं.एल-41012/37/92-आई.आर. (डी.यू.)/(बी-I)]
अजय कुमार, ईस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2163.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Tamil Nadu, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway and their workman, which was received by the Central Government on 30-7-2001.

[No. L-41012/37/92-IR(DU)/(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
2ND FL., CITY CIVIL COURT BUILDINGS,
CHENNAI-104

Wednesday, the 1st day of July, 1998
2497 GI/2001—10.

PRESENT :

Thiru S. Ashok Kumar, M.Sc., B.L.,
Industrial Tribunal.

Industrial Dispute No. 5 of 1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I.D. Act, 1947 between the Workmen and the Management of Southern Railway, Trichirapalli).

BETWEEN

Shri M. Rajaram,
No. 10-A, 1st Street, Kumurappa Nagar, Katpadi 632007,
N.A. Dist. Tamil Nadu.

AND

The Sr. Divisional Personnel Officer,
Southern Railway,
Tiruchirapalli 620 001.

REFERENCE :

Order No. L-41012/37/92-IR(DU), Ministry of Labour,
dated 3rd January 1993. Govt. of India, New
Delhi.

This dispute coming on for final hearing on Friday, the 5th day of December 1997, upon perusing the reference, claim, counter statements and all other documents on record, upon hearing the arguments of Thiru D. Hariparanthaman, Advocate appearing for the workman and of Thiru G. Kalyanasundaram, Advocate appearing for the respondent-management and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the management of Southern Railway, Tiruchirapalli in not employing Shri M. Rajaram with effect from 21-12-1982 is legal and justified? If not, to what relief the workman is entitled to?"

2. The main averments found in the claim statement filed by the petitioner-union are as follows :

The petitioner was working as a Mazdoor from 24-6-70 to 21-10-72 and later 21-3-82 to 20-12-82. In the first spell, petitioner was working in the office of permanent way Inspector, Katpadi which comes under Madras Division of the Southern Railway. In the second spell, petitioner was working in the office of the Permanent Way Inspector, Vellore cantonment which comes under Trichy division. Petitioner was abruptly denied employment on 20-12-82 without any reasons whatsoever. The action of the respondent's in terminating the services of the petitioner amounts to retrenchment under Sec. 2(00) of the I.D. Act. Since the respondent failed to comply with the mandatory provision Sec. 25F of the I.D. Act, the termination is illegal and void. Personal representations were made by petitioner immediately after his termination. Representations did not bring any reply. Written representation dated 6-5-84, 2-5-85 and 22-9-86 were also given by petitioner. Petitioner also made a representation to Thiru Basudev Acharya, Member of Parliament who in turn represented the matter to the General Manager, Southern Railway by his letter dated 10-12-86. Another representation dated 4-2-87 was also sent by the Hon'ble M.P. on behalf of the petitioner. It was informed by the General Manager's office in their letter dated 13-2-87 that they would inform the M.P. in due course. It was also informed by their letter dated 2-3-87 that the matter is under consideration of Southern Railway. The petitioner applied for employment through his application dated 21-3-87 to Trichy division with reference to their letter dated 11-3-87. The petitioner also applied for employment to Madras Division through his application dated 21-3-87. By applications dated 17-3-88 and 26-9-88 the petitioner sought employment from Trichy and Madras Divisions. The Deputy Minister of Labour & Parliamentary affairs in his letter dated 2-6-89 forwarded petitioner's representation to the Deputy Minister for Railways for necessary action. The petitioner also applied for employment to both Madras and Trichy Divi-

sions with reference to their circular dated 19-7-90. Apart from this, representation was made by petitioner's mother to the department seeking employment to petitioner as petitioner's father was an ex-employee of Railway Administration. It was informed by the department in their letter dated 13-8-86 that petitioner's appointment would be considered in accordance with priority and registration. Since all the petitioner's efforts did not bring any fruit, an Industrial dispute was raised by the petitioner. The termination of petitioner is illegal as it is opposed to Chapter VB of the I.D. Act and in particular Sec. 25(N) of the Act. The termination is illegal and in contravention of Sec. 25(G) of the I.D. Act, since petitioner's juniors are retained while he was terminated. New employees have been taken by the department but failed to provide employment to the petitioner which is contrary to Sec. 25(H) of the I.D. Act. The petitioner prays to pass an award holding that the action of the management of Southern Railway, Trichirapalli division in not employing the petitioner w.e.f. 21-12-92 is illegal and not justified and direct the respondent to reinstate the petitioner with back wages, continuity of service and other attendant benefits.

3. The main averments found in the counter statement filed by the respondent are as follows :

The petitioner was originally a casual labourer of the Katpadi section of the Madras Division of Southern Railway. He had worked there as a casual labourer during the period from 24-6-70 to 20-11-72 with occasional breaks in service. The petitioner abruptly stopped coming for work thereafter. The Katpadi Permanent Way Section comes under the administrative jurisdiction of the Madras Division of the Southern Railway and as such, is outside the administrative control of the respondent. The petitioner was later engaged as a casual labourer in the Vellore Permanent Way Section of the Trichirapalli Division of the Southern Railway coming under the charge of the Permanent Way Inspector of Vellore during April 1982. The petitioner worked as a casual labourer in the Permanent Way Section of Vellore till the wage period ending 20-12-82 with occasional breaks. However, the petitioner did not turn up for work thereafter. The petitioner could not therefore be engaged for sanctioned works. It was he petitioner who stopped coming for work abruptly. The question of termination or retrenchment of the petitioner does not arise at all, when no termination has actually taken place, the provisions of Sec. 2(00) of Sec. 25F of the I.D. Act, do not come into play at all. There has been no representation whatsoever from the petitioner explaining his abrupt absence from work beyond wage period ending on 20-12-82 and seeking work. It is not clear from the petition as to the Railway division to which the petitioner had sought engagement. The respondent has not received any references from the General Manager, Southern Railway, in respect of the petitioner. On the one hand the petitioner has stated that General Manager, Southern Railway gave a reply and on the other, the matter is under consideration of South Central Railway, which has no jurisdiction over the matter sought to be raised in this petition. The matter of engagement was first raised by the petitioner in a petition dated 15-3-91 filed by him before Regional Labour Commissioner, Central, Madras u/s. 2A of the I.D. Act, 1947, the petitioner did not at any point of time during the proceedings before the Regional Labour Commissioner say that he had represented about his engagement as casual labourer. Even according to the petitioner's claim, he had given a representation only on 6-5-84. The petitioner cannot apply for employment in the railways as and when he wishes to do so. He could apply only against specific employment notice if and when called for, provided he satisfied the eligibility conditions. There was no engagement of casual labour fresh faces in the year 1987. Railway Board evolved a scheme for inclusion of casual labour discharged prior to 1-1-81 for want of work or completion of work in the live register during March 1987. If the alleged application of the petitioner is with reference to the instructions issued in this regard, then he should have applied to the Madras division of the Southern Railway. The petitioner who had been initially engaged in the PWI, Katpadi section of the Madras division can only apply to Madras division authorities with proper proof in support of his casual labour service in the concerned unit. Inclusion in live register is not automatic but subject to verification of the details produced by the casual labourer concerned. The petitioner who had been initially engaged as a casual labour in the PWI Katpadi unit

of the Madras division, cannot apply to Trichirapalli division. Even otherwise, the petitioner is not covered by these provisions as he was not discharged by the Railway Administration but abruptly stopped from coming to work on his own volition. As per the provisions of the Indian Railway Establishment Manual Volume II, Para 2004, under the head "Notice of termination" the service of casual labour will be deemed to have been terminated when they absent themselves or on the close of the day. No reference from any Hon'ble Minister in respect of petitioner has been forwarded to the respondent. The claim of the petitioner that he was informed by the letter dated 13-8-86 as regards considering him for appointment is denied. When there is no termination, the question of legality or Sec. 25N, 25G of the I.D. Act, 1947 being attracted does not arise. The petitioner's claim that fresh labour were engaged is denied. It was the petitioner who did not turn up for work beyond 20-12-82 and remained unauthorisedly absent. He had turned up at the office of the PWI/Vellore on 8-5-83 only to get entries in the casual labour card and not to seek work. The petitioner has not produced any proof of alleged termination of his service w.e.f. 21-12-82. The petition as such is not correct or tenable and is not sustainable either in law or on facts. The respondent prays to dismiss the petition.

4. The petitioner has examined himself as WW1 and Ex. W.1 to W-44 have been marked. No witness was examined on behalf of the respondent. Ex. M.1 was marked.

5. The point for consideration is : Whether the action of the respondent management of the Southern Railway, Trichirapalli in not employing Shri M. Rajaram w.e.f. 21-12-1982 is legal and justified ? If not, to what relief the workman is entitled to ?

6. The Point : The petitioner Rajaram was employed as Mazdoor from 24-6-70 to 21-10-72 in the office of the Permanent Way Inspector, Katpadi which comes under Madras Division. From 21-3-82 to 20-12-82, the petitioner was employed in the office of the Permanent Way Inspector Vellore Cantonment which comes under Trichy division. On 20-12-82, the petitioner was not engaged for want of sanction as seen from Ex. W-1 service records of the petitioner. Thereafter the petitioner made several representations by himself, or through his mother or through certain members of Parliament. Ex. W-2 dated 6-5-84, W-3/21-3-87, W-15/30-3-87, W-16/17-3-88, W-17/17-3-88, W-19/26-9-88, W-20/26-9-88, W-23/22-5-89, W-26/27-6-89, E-28/19-7-90 are letters sent by the petitioner seeking reinstatement. Ex. W-4, dated 13-8-86 is letter of the petitioner's mother seeking reinstatement of the petitioner. Ex. W-14, W-21, W-22, W-24, W-27, W-29, W-30 are postal acknowledgement cards signed by the respondent's official for the various representations, by the petitioners. Ex. W-18 is certificate of posting of Ex. W-17. Ex. W-7 and W-10 are letters of Thiru Basudev Acharya Member of Parliament, regarding the reinstatement of the petitioner. Ex. W-25 is another letter sent by Thiru Radhakrishna Malaviya, Deputy Minister of Labour, and Parliamentary affairs to the Deputy Minister for Railways regarding the reinstatement of the petitioner. Ex. W-8, W-11 and W-12 are letters of the General Manager sent to Shri Basudev Acharya, Member of Parliament which were then communicated to the petitioner regarding his employment. In spite of the several representations made by the petitioner and also letters sent by the Member of Parliament and Hon'ble Deputy Minister for Labour, the petitioner was not reinstated or absorbed in the services by the respondent. On 15-3-91, the petitioner filed a 2A petition before Asst. Labour Commissioner (Central), Madras and the respondent filed a counter statement Ex. W-32, Ex. W-34 is a circular regarding maintenance of live casual register and Ex. W-35 is the order dated 4-3-87 regarding the maintenance of live casual register for casual labourers. Ex. W-36 is notification regarding application for appointment as open line casual labour in railways. Ex. W-37 is application of the petitioner dated 7-9-91 to the Assistant Commissioner of Labour (Central), Madras regarding his employment. Ex. W-38 is the reply of the management to the Regional Labour Commissioner (Central), Ex. W-39 is the rejoinder of the petitioner to the reply statement of the management to the Regional Labour Commissioner (Central), Ex. W-39 is the rejoinder of the petitioner to the reply statement of the Divisional Personnel Officer, Trichirapalli. W-40 is the reply given by the respondent to the rejoinder of the petitioner, Ex. W-41 is the conciliation failure report, Ex. W-42 is the order of Central Administrative Tribunal in O.A. 603/90, W-43 is the order of Central Administrative

Tribunal, Madras Bench in O.A. 1618/93. W-44 is the letter of the Assistant Commissioner of Labour (Central), Madras regarding the conciliation proceedings. The contention of the petitioner is that from 24-6-70 to 21-10-70 the petitioner was working in the office of the Permanent Way Inspector/Katpadi and thereafter from 21-3-82 to 20-12-82, he worked under Permanent Way Inspector/Vellore Cantonment and after 20-12-82 he was not engaged for want of sanction. In both the spells, the petitioner has worked continuously for 240 days and therefore termination of the services of the petitioner abruptly without complying the mandatory provisions of Sec. 25F of the I.D. Act, amounts to retrenchment and his termination is illegal. The further contention of the petitioner is that after specific instructions from the Railway Board to include casual labourers who were retrenched before 1-1-81 and also after 1-1-81 in the live register and inspite of petitioner's application to include his name, the petitioner's name was not included in the live register and the petitioner was not reinstated while several of his juniors have been reinstated in service. The contention of the respondent management is that in the first spell, when he worked under PWI/Katpadi after 21-10-72 he did not turn up for work, probably, for more fruitful employment elsewhere and did not apply for inclusion of his name in the live register and the petitioner should have applied at the Madras division which includes Katpadi where he was initially engaged and therefore there is no question of retrenchment of the petitioner.

7. From the service card Ex. W-1 it could be seen that after 1-10-72 the petitioner did not turn up for work in the first spell when he was working under PWI/Katpadi. Therefore the contention of the respondent that the petitioner himself absented unauthorisedly and therefore, the question of retrenchment does not arise seems acceptable. But as regards the next spell, of the engagement of the petitioner from 21-3-82 upto 20-12-82 he has worked for 228 days and he was not engaged thereafter for want of sanction. Therefore, the non-engagement of the petitioner after 20-12-82 is not due to the fault of the petitioner because for want of sanction. If Sundays and other National holidays are also included as held by the Hon'ble Apex Court in 1986 1 LLJ P 34, THE MGT. OF STANDARD MOTOR PRODUCTS OF INDIA LTD., Vs. SHRI A. PARTHASARATHY & ORS. and 1985 11 LLJ P 539 THE WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. THE MGT. OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPN., the total number of days the petitioner should have worked will come to 240 days, within the meaning of Section 25B of the I.D. Act. But while the services of the petitioner either for want of sanction or any other reason, the respondent management has not followed the provisions of Section 25F of the I.D. Act. In the railways the person who has worked continuously for 120 days should be granted temporary status. The contention of the respondent management regarding granting of temporary status as seen from Ex. W38 is a reply to the rejoinder of the petitioner before Regional Labour Commissioner (Central) is as follows:

"The grant of temporary status is not done then and there but only collectively much later duly grouping together all such eligible casual labourers. Further the petitioner was not engaged in open line works and the grant of temporary status after 4 months or 120 days continuous service applies only to open-line casual labourers. The petitioner was engaged in project work and the scheme for grant of temporary status to project casual labour was introduced only from 01-01-84, on which date the petitioner was not in active engagement."

The respondent has not produced any document to show that grant of temporary status for such of those workmen who have continuously worked for 120 days is available only to those casual labourers engaged in open line and grant of temporary status to project casual labour was introduced only on and from 1-1-84. In the same letter, the respondent has mentioned that even if the petitioner was without work for certain period after his stoppage, such stoppage was due only for want of specific sanction for the work concerned and there was every possibility of the petitioner being provided with work on receipt of necessary sanction. The above statement of the respondent would show that the petitioner was denied employment for want of sanction for some work, during December 1982. The petitioner had been sending

several representations either by himself or through Hon'ble Member of the Parliament for reinstatement in service. But on one pretext or another, he was not re-employed. Lastly the Personnel branch of Head Quarters Office has issued instructions for maintenance of casual labour register and open line casual labour following the judgement of the Hon'ble Apex Court in Inter Alia Yadav & Ors. Vs. Union of India & Ors. (1985 11 LLJ P 406) by promoting a scheme for employment of such of those employees who were discharged before 1-1-81 and also after 1-1-81. Ex. W-34 is the instructions issued by the Headquarters office of the Personnel branch Madras to the various unit officers to give wide publicity to the notification exhibiting in all prominent places, offices and railway stations and to receive representations, to verify the genuineness of the claim and send the applications and complete the processing before 30-4-87 and send a complete report to the Headquarters by 9-5-87. Ex. W-35 is the circular letter dated 4-3-87 issued by the Ministry of Railways regarding opportunity to be given open line casual labour who were also discharged before 1-1-81 for want of work or completion of work. In Ex. W-32 letter dt. 14-8-91, sent by the respondent to Regional Labour Commissioner (Central) respondent has admitted that the railway board has issued instructions that such of the casual labourers who were stopped from work after 1-1-81 may be considered for inclusion in the live register to be opened for that purpose. But the respondent has contended that the petitioner's initial engagement was with Permanent Way Inspector/Katpadi which comes under Madras Division and as such he should have applied to the Madras Division if he wished to be included in the live register. The respondent has further contended that the question of inclusion in the live register at Trichirapalli division did not therefore arise in the case of the petitioner as his initial appointment was not falling within the jurisdiction of Trichirapalli division. In Ex. W-38 letter dt. 7-2-92, sent to the Regional Labour Commissioner, the respondent has mentioned as follows:

"The petitioner should have applied as required at that time for inclusion in the live register, to the Divisional Personnel Officer, Southern Railway, Madras Division since he was initially engaged in the Permanent Way Inspector's office at Katpadi coming within the jurisdiction of the Madras Division of the Southern Railway.

It is quite surprising to note that inspite of the wide publicity given to the Notice calling on casual labourers who were stopped for want of sanction to apply for inclusion in the live casual register and the petitioner had not responded in time and instead he has been repeatedly harping on re-engagement in the Permanent Way Inspector Unit, Vellore. Even if the petitioner was without work for a certain period after his stoppage, such stoppage was due only for want of specific sanction for the work concerned and there was every possibility of the petitioner being provided with work on receipt of necessary sanction."

In the letter dt. 26-3-92, sent to Regional Labour Commissioner, the respondent has mentioned as follows:

"The petitioner was not retrenched from engagement by the Railway Administration. He stopped from coming to work on his own volition and did not at any time turn up thereafter. He did not also respond to the call given for inclusion of casual labourers stopped for want of sanction or want of work as the case may be in the Live Register. By stating that "recruitment" of casual labour was banned, it was only meant that there was no engagement of new faces. The fact, however, remains that the petitioner did not ever turn up for further work after 20-12-82. The petitioner was not a retrenched casual labourer. He was only stopped for want of sanction as could be seen from the entry made in the casual labour card.

He did not also apply to the Divisional Personnel Officer, Southern Railway, Madras for inclusion in Live Register as he was initially engaged as a casual labourer in the permanent Way Inspector's Office at Katpadi coming within the administrative control of the Madras Division of the Southern Railway. The petitioner is put to strict proof with regard to his claim of having applied to the Divisional Railway

Manager, S. Railway, Tiruchirapalli. In fact in his reply to this respondent's letter dt. 14-8-91 the petitioner has only mentioned that he had applied to the G. Manager, S. Railway, Madras for re-engagement. He had not stated that he applied to the Divisional Manager, S. Rly., Trichirapalli. His claim of now having represented to the Divisional Railway Manager, S. Rly., Tiruchirapalli for re-engagement is purely an afterthought and totally false."

From the above contentions of the respondent in their various letters to Regional Labour Commissioner, the following facts emerge (i) The initial engagement of the petitioner was with the Permanent Way Inspector/Katpadi within the jurisdiction of Madras Division and therefore he should have applied to the Divisional office at Madras for inclusion of his name in the live Register. (ii) The petitioner has not applied to the Divisional Railway Manager, Southern Railway, Tiruchirapalli for re-engagement as contended by him and the contention of the petitioner that he had applied to the Divisional Railway Manager, Tiruchirapalli as an afterthought.

The petitioner has sent Ex. W-13 application dt. 21-3-87 to the Divisional Railway Manager, Southern Railway, Tiruchirapalli. The Divisional Railway Manager, Tiruchirapalli has received his application on 28-3-87 as seen from Ex. W-14 postal acknowledgement card. The petitioner has also produced registration receipt for sending Ex. W-13 application. The petitioner has also sent a similar application dated 30-3-87 to the Divisional Railway Manager, Madras Division which has been received by the Divisional Railway Manager as seen from postal acknowledgement attached with Ex. W-15. The petitioner has also produced registration receipt for having sent Ex. W-15 application. Thus it could be seen that the petitioner has sent 2 applications one to the Divisional Railway Manager (Personnel), Southern Railway, Trichy and another to the Divisional Railway Manager (Personnel), Madras Division. The above two Ex. W-13 and Ex. W-15 applications have been sent continuing necessary particulars as required by the notification marked as Ex. W-36. Therefore the contention of the respondent management that the petitioner has not sent necessary applications to empanel himself in the casual labour live register (Open line) as required by the Railway Board in their directions mentioned earlier and as found in Ex. W-34 and W-35, are not correct. The petitioner has complied with instructions of the Railway Board to include his name in the live casual labour register—Open line casual labour. But the respondent has not included his name till date inspite of the various representations from 1984 to 1990 and also during the conciliation proceedings in 1991 and 1992. The petitioner's initial engagement was at Katpadi within Madras Division, and subsequent engagement was at Vellore within territorial jurisdiction of Trichirapalli Division. It was only while working at Vellore Division, the petitioner was not engaged for want of sanction of work. Therefore, it would have been proper for the respondent to include his name in the live register of Tiruchirapalli Division. But the respondent has not included his name in both the Division.

Hon'ble Central Administrative Bench, Madras in O.A. 603/90 and O.A. No. 1618/93 Ex. W-42 and W-43 has held that, such of those casual labourers who were not re-engaged or re-employed after their termination after 1-1-81 should be again empanelled on their application.

While terminating the services of the petitioner on 20-12-82, the respondent has not followed the mandatory provisions of Section 25F of the I.D. Act. Inspite of petitioner's various letters and also applications as mentioned above, the respondent has failed to re-engage him or reinstate him and also failed to empanel him in the live register for casual labourers. In the above circumstances, I hold that the action of the respondent management in not employing the petitioner w.e.f. 21-12-82 is illegal and unjustified. The petitioner is entitled to reinstatement with 50 per cent backwages and other attendant benefits. Award passed. No costs.

Dated, this the 1st day of July 1998.

S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner-workman :

W.W. 1 : Thiru Rajaram M.

For Respondent-management : Nil.

DOCUMENTS MARKED

For Petitioner-workman :

- Ex. W-1/ : Service Card of the petitioner/workman (xerox copy).
- W-2/6-5-84 : Letter from petitioner seeking reinstatement (copy).
- W-3/2-5-85 : Letter from petitioner seeking reinstatement (copy).
- W-4/13-9-86 : Letter from petitioner's mother seeking reinstatement of petitioner.
- W-5/ : Reply by the Department to the letter dt. 13-8-86 (copy).
- W-6/22-9-86 : Letter from petitioner seeking reinstatement.
- W-7/10-12-86 : Letter from Member of Parliament (copy).
- W-8/16-12-86 : Letter from Member of Parliament (Original).
- W-9/9-1-87 : Letter from respondent to petitioner.
- W-10/4-2-87 : Letter from Member of Parliament (copy).
- W-11/13-2-87 : Letter from Member of Parliament (copy).
- W-12/2-3-87 : Letter from Member of Parliament (copy).
- W-13/21-3-87 : Letter from petitioner seeking reinstatement.
- W-14/ : Acknowledgement.
- W-15/17-3-88 : Letter from petitioner seeking reinstatement.
- W-16/17-3-88 : Letter from petitioner seeking reinstatement (copy).
- W-17/17-3-88 : Letter from petitioner seeking reinstatement (copy).
- W-18/ — : Certificate of posting proof.
- W-19/26-9-88 : Letter from petitioner seeking reinstatement.
- W-20/26-9-88 : Letter from petitioner seeking reinstatement (copy).
- W-21/26-9-88 : Acknowledgement.
- W-22/ — : Acknowledgement.
- W-23/22-5-89 : Letter from petitioner seeking reinstatement.
- W-24/ : Acknowledgement.
- W-25/ : Letter from Member of Parliament.
- W-26/ : Letter from petitioner seeking reinstatement (copy).
- W-27/ : Acknowledgement.
- W-28/19-7-90 : Letter from Petitioner seeking reinstatement (xerox).
- W-29/ : Acknowledgement.
- W-30/ : Acknowledgement.
- W-31/15-3-91 : 2A petition filed by petitioner (xerox).
- W-32/
- W-33 to W-36/14-8-91 : Counter filed by the respondent.
- W-37/7-9-91 : Rejoinder to the counter statement.
- W-38/7-2-92 : Reply to the rejoinder filed by respondent.
- W-39/18-3-92 : Rejoinder to reply statement filed by petitioner.
- W-40/26-3-92 : Reply to the rejoinder by the respondent.

W-41/31-3-92 : Failure report.

W-42/13-8-91 : Order passed by Central Administrative Tribunal in O.A. 603/90.

W-43/1-12-95 : Order passed by Central Administrative Tribunal in O.A. 1618/93.

W-44/19-3-91 : Letter by Assistant Labour Commissioner (C) to Shri M. Rajaram and Permanent Way Inspector (xerox).

For Respondent-management :

M. 1 : Government of India/Ministry of Railway/Railways to the General Managers, All Indian Railways rega. maintenance live casual labour register (original).

नई दिल्ली, 31 जुलाई, 2001

का.प्र. 2164.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चित्रदुर्गा ग्रामीण बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-07-2001 को प्राप्त हुआ था।

[सं.एल-12011/27/88-आई.प्रार. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2164.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chitradurga Gramin Bank and their workman, which was received by the Central Government on 30-7-2001.

[No. L-12011/27/88-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT
BANGALORE

Dated, the 9th July, 2001

PRESENT:

Hon'ble Shri V. N. Kulkarni, B.Com., LLB,
Presiding Officer
CGIT-Cum-Labour Court,
Bangalore.

C.R. No. 42/1989

I PARTY

Shri Ramachandra Rao,
C/o Anant, P. Savadi,
Advocate,
Room No. 8,
II Block,
IIIrd Floor,
Supermarket,
Hubli-580020
(Advocate—Shri Anant P. Savadi)

II PARTY

The Chairman,
Chitradurga Gramin Bank,
Sri Kudli Sringeri,

Mahasamstanam Buildings,
P.B. No. 70,
Jogimutt Road,
Chitradurga-577501
(Advocate—Shri P. Saukar)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12011/27/88-IR(Bank. I) dated 17-7-1989 for adjudication on the following schedule :

SCHEDULE

"Whether the action taken by the management of Chitradurga Gramina Bank in dismissing Shri Ramchandra Rao, Junior Clerk from Services is justified? If not, to what relief Shri Ramchandra Rao is entitled?"

2. The First party workman was working with the Second Party management. He committed misconduct. Charge sheet was issued and enquiry was held. On the basis of the enquiry report first party workman was dismissed and therefore Industrial Dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the first party in brief is as follows :

5. The case of the first party is that the first party was working with the management as Clerk. An article of charges dated 25-7-1984 was given to the first party for certain irregularities. According to the first party the charges are not correct and there was no misconduct at all. Misconduct was such that under the standing orders the management could not take any action.

6. The first party, so far as enquiry is concerned has stated so many things in his claim statement and has contended that no opportunity was given, to engage a lawyer to defend his case was flatly refused by the enquiry officer. The enquiry officer acted as prosecutor and the entire enquiry is not correct and the finding given by him is perverse. The first party for these reasons has prayed to pass award in his favour.

7. The case of the second party in brief is as follows :

8. It is true that the first party was working as Junior Clerk and his services were terminated on account of serious misconduct committed by him. The punishment is correct. Regarding enquiry, the contention of the management is that the allegations made by the first party are not correct and full opportunity was given to the first party and enquiry was properly conducted and the explanation given by the first party is not correct.

9. It is the further case of the management that on 11-4-84 the first party received a sum of Rs. 100 from the customer of the bank towards remittance to the loan account but failed to account for the same and thereby misappropriated a sum of Rs. 100.

10. It is the further case of the management that the first party committed certain procedural irregularities as stated in the Counter. It is said that initially one Mr. B. S. Shankaranarayan was appointed as Enquiry Officer, but the first party objected the said appointment as Enquiry Officer but the management said that he was the competent to hold enquiry.

11. So far as enquiry is concerned parawise reply is given in the Counter Statement. It is said that the Principles of natural justice were followed and the enquiry is perfect. It is said that the punishment is proper and the management has prayed to reject the reference.

12. It is seen from the records that since a long time this reference is pending and proper progress is not made. It appears that the matter was taken to High Court and the Writ Petition No. 14072/99 was disposed off.

13. It is seen from the records that on behalf of the management, MW1 was examined and he has given detailed evidence about the enquiry held by him. He is cross examined. It appears that this court by its order dated 1st April 1999, has held that the DE is fair and proper and thereafter the matter was posted for arguments.

14. It is seen from the records that on 18-4-2001 workman got examined himself. Before I proceed further, I would like to address my self about the objections raised by the management for examining this workman on 18-4-2001. Petition was filed to strike off the said evidence. On 18-4-2001 at the request of counsel, Mr. Venkatesh, cross examination was deferred. The application filed by the management was rejected. It was made known to the parties that the workman can lead evidence only regarding victimisation and that will be the only relevant evidence which can be considered after the enquiry is held as fair and proper. The learned counsel for the second party agreed. I have read the decision of the Court. Keeping in mind the principles held in the above decision of High Court of Karnataka, it is clear that after the finding on the Domestic Enquiry holding it as fair and proper, this court cannot permit to lead evidence again on merits. The fact remains that, only regarding victimisation for limited purpose evidence can be allowed.

15. The first party wanted to lead the evidence and the management objected it and the management filed application. Second party wanted to file objection. This being the oldest case, I rejected the application with an open understanding that the evidence if any adduced, it should be regarding victimisation and that must be taken as evidence because the domestic enquiry is held as fair and proper. In view of this the purpose was served. Further Mr. PSS said he has no objection if evidence is given on victimisation. His only submission was no evidence can be taken on merits. I agree with him.

16. I have heard both sides in detail and I have perused the citations given by the parties.

17. I have considered the entire material and the evidence recorded by the Enquiry Officer carefully in order to find out whether the punishment of dismissal is proportionate or harsh.

18. It was vehemently argued by the learned counsel for the first party that the report of the Enquiry Officer is perverse and the finding of the Enquiry Officer holding that the charges are proved is not sound and correct. He further argued that according to the witness who paid Rs. 100 to the first party for depositing the same in his own account has stated in his evidence that no amount was paid by him and therefore, the finding is perverse. The learned counsel for the management Mr. Pradeep Sankar submitted that this court has limited powers, after holding that the DE is fair and proper to consider all this. I agree with him. But fact remains that the misconduct is not proved as per the evidence before the enquiry officer.

19. In the instant case I have strictly scrutinised the evidence, in order to appreciate the arguments advanced by the learned counsel for the first party. The learned counsel for the first party pointed out, from the enquiry proceedings and argued that the deposition of Shri H. G. Ramachandra Rao S/o V. N. Veerappa, is considered, it is clear that the finding of the enquiry officer is perverse. The said Shri B. S. Shankar-narayan has stated before the Enquiry Officer that he has not remitted Rs. 100 on 11-4-1984. It may be a fact that the first party has written the slip for depositing Rs. 100 in the running account, but Shri B. S. Shankar-narayan says that he has not remitted Rs. 100 on 11-4-84. I have considered all the material placed before the enquiry officer and I am of the opinion that the report is perverse.

20. Having considered all this, now I am of the opinion that when there is no direct clear and cogent evidence to connect the first party with the alleged misconduct, the punishment of dismissal is too harsh and not proportionate.

21. This is a matter of 1989. The workman was dismissed long back. I feel ends of justice will meet if I direct the management to reinstate the first party without any back-wages. Accordingly I proceed to pass the following order.

ORDER

The reference is partly allowed. The management is directed to reinstate the first party from the date of dismissal with continuity of service. In the given circumstances backwages are not allowed.

(Dictated to PA transcribed by her corrected and signed by me on 9th July 2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का. घा. 2165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लक्ष्मी विलास बैंक लि. के प्रबन्धन में संलग्न नियोजकों और उनके कर्मचारों के बीच, प्रमुख में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं० एल-12011/54/97-आई. आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O.2165.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Lakshmi Vilas Bank Ltd. and their workman, which was received by the Central Government on 30-7-2001.

[No. L-12011/54/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 21st June, 2001

Present : K. KARTHIKEYAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 525/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 126/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Claimant, the General Secretary, The Lakshmi Vilas Bank Employees Union, Chennai and the Management of Lakshmi Vilas Bank Ltd., Chennai).

BETWEEN

The General Secretary, I Party/Claimant
Lakshmi Vilas Bank Employees
Union, Chennai.

AND

The Chairman and Chief
Executive Officer,
Lakshmi Vilas Bank Ltd. II Party/Management

APPEARANCE .

For the Claimant	Sri D. Hariparanthaman and V. Ajoy Khose, Advocates.
For the Management	M/s T.S. Gopalan & Co. Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-12011/54/97-IR(B.I.) dated 23-09-98.

This reference has been made earlier to the Tamil Nadu Industrial Tribunal, where it was taken on file as I.D. No. 126/98. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 525/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 9-3-2001. On receipt of notice from this Tribunal, counsel on either side present with their respective parties and prosecuted this case further.

This matter came up before me for final hearing on 31-5-2001, upon perusing the Claim Statement, Counter Statement, other material papers on record, and documentary evidence let in on either side and upon hearing the arguments of learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following:—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows:—

Whether the action of the Management of Lakshmi Vilas Bank Ltd. Karur in not framing fair transfer policy to their employees is justified? If not to what relief the employees/Union is entitled?

2. The Industrial Dispute between the parties is briefly as follows:—

The Petitioner Union is a Trade Union registered under the Trade Unions Act, 1926. It has entered into various settlements relating to service conditions and welfare of the workman employed under Respondent, the Management of Lakshmi Vilas Bank. The Respondent is a banking company having its Registered Office at Kathapara near Karur. It has got branches, divisional offices and other establishments throughout the Country. The clerical and subordinate staff are workmen within the

meaning of section 2(s) of Industrial Disputes Act. The wages, allowances and other service conditions of the workmen for the Respondent bank are determined by industry-wise awards and settlements. In the year 1952 the National Tribunal gave an Award popularly known as 'Sastri Award'. The said Tribunal observed that 'when an employee joins the service of Bank he is expected to work of any place as per the instructions of the Management, governed by the interests of the institution determines.' As per that Award 'transfers are normally incidence for the working of the bank and they must be left to the discretion of those who guide the policies of the bank and manage its affairs.' The National Tribunal had also directed in that Award that 'in general, the policy should be to limit the transfers to the minimum consistent with the banking needs and efficiency. As far as the subordinate cadre are concerned the Tribunal held that there should be no transfers ordinarily and if there are any transfers at all, they should not be beyond the language area of the person so transferred.' Having regard to the provisions of of the Sastri Award, the Management of the bank is empowered to transfer the clerical staff so long as the transfer is within the state or the language area. The normal practice in the Respondent bank is that wherever vacancies in clerical staff in any place arise consequent to promotion from clerical cadre to officer cadre or when vacancies take place consequent transfers effected on request, then to the extent of vacancies arising, the bank will have to identify the clerical staff who are to be considered for filling up the vacancies by transfers. The Petitioner Union demanded for the formulation of transfer policy/guidelines and also made demand against vindictive, mala fide and compassionate transfers in order to put an end to arbitrary transfers and also to solve various grievance of the workmen. The Respondent bank/Management declared a policy relating to transfers by their circular dated 18-4-1988. It is contended by the Petitioner Union that it was a policy decided unilaterally without consulting the petitioner union. Some of the terms of the said policy were objectionable and some of the terms had to be included or modified. The Bank/Management is of the opinion that it is not possible to prescribe any minimum period of service for the clerks in any particular branch/place. In fact, transfers are effected only because of requests for posting of clerical staff or because of vacancies arising consequent to promotion. It is the contention of the Petitioner Union that even the transfer policy unilaterally declared by the bank was not strictly followed and the Respondent bank started effecting transfers to the whims and fancies again and contrary to their own policy/guidelines. Therefore the Petitioner Union sought some modification/inclusion in

the said transfer policy but the Respondent bank did not come forward to negotiate any settlements. It is the contention of the Bank/Management that the policy stipulates that no employees shall be allowed to continue in the same place/branch for more than seven years. It is only after, such employees subjected to transfer, the other employees with lesser service are considered for transfers. The said policy adopted by the bank/Management has been to meet the bank's needs and exigencies of administration and also to protect the interest of the employers, who have for special reasons may seek transfer for the particular place/town. The said policy provides adequate safeguards against abuse or misuse of the power to transfer. It is the further contention of Bank/Management that every year when a transfer list is released, invariably the petitioner union raised objection on behalf of certain employees who were transferred without any rhyme or reason little realizing that the transfers of the bank are done in conformity with the laid down policy. Any prescription of minimum qualifying period of service to be considered nor transfer will only reduce the number of employees who could be considered for transfer and thereby it will only cause serious prejudice to the members of the clerical staff, who have for genuine reasons made a request for posting to a particular place. The Petitioner/Union had sought modification and inclusion in guideline No. 10 relating request transfer as to outer limit for remaining in the particular place/branch. Clause 10 in the Formulated Policy reads that 'no employee shall be allowed to continue in the same place/town/branch for more than seven years'. The Petitioner Union wants to modify it as 'an employee is liable to transfer on completion of ten years in a branch/centre, irrespective of sex, in order to accommodate long pending requests of the employee. The petitioner Union likes to have two more guidelines as to request transfer stating that the application received shall be classified into three categories as (a) medical, (b) verge of retirement and (c) general and the same shall be registered according to the date of receipt of Application at the branch level and that as and when vacancies arise in a branch office/centre, the pending applications shall be considered from each category in a ratio of 1:1:1. The modification sought for is just and reasonable. As far as the other guidelines, there is no dispute or difference to adopt the guidelines formulated by the Respondent/Bank in the transfer policy. The Respondent/Bank had contended that the transfer policy has been invoked for the last ten years. As transfers are made within the framework of the transfer policy, there is no scope to allege any victimization or unfair labour practice. Such being the case, there is no warrant or justification to modify the policy. The Petitioner has not pointed out how the policy is

unfair. The policy cannot be said to be unfair merely because no minimum period of service for transfer is prescribed. The transfer policy of each bank is based on its requirements and business needs. No employee can claim a right of choosing the place of work and therefore, the power to transfer cannot be restricted to suit the requirements of the employees. The Demand of the union that there should be minimum period of service before an employee could be considered for transfer and transfer should be made only to accommodate requests, is wholly unfair and unjustified. None of the grounds urged by the Petitioner Union calls for interference by this Court. The transfer policy adopted by the Respondent bank has worked out satisfactory and if at all objections were raised, they were made for personal reasons. There was no dispute on transfer between 1988 and 1995. The Transfer policy of the Respondent Bank is not an arbitrary one. Since there is a transfer policy, the submission of the petitioner does not merit consideration. The office bearership in the Union was never the consideration for effecting the transfer. The alterations demanded by the Petitioner Union cannot be accepted as it will put unreasonable fetters on the managerial functions of the bank.

3. When the matter was came up before the Tamil Nadu State Industrial Tribunal for enquiry, documents were marked by consent of both the parties as Ex. M1 to M5. Subsequently, the case has been transferred to the file of this Tribunal. Here the documents were marked by consent as Ex. W1 to W3. No oral evidence has been let in on either side. The learned counsel on either side have advanced their arguments.

4. The point for my consideration is—

“Whether the action of the management of Lakshmi Vilas Bank Ltd., Karur, in framing the transfer policy is unfair to their employees. If the transfer policy adopted by the Respondent/Bank is unjustified, to what relief the employees/Union is entitled ?

Point :

It is admitted that the Respondent Bank/Management had formulated the policy relating to transfer and it was adopted as the guidelines to be followed by the bank and the same were codified in the form of circular No. 26/88 dated 18-4-1988. The zerox copy of the transfer policy is Ex. M1. The Petitioner Union has not pointed out how the transfer policy is unfair. In Ex. M1 Transfer Policy, under the heading Request Transfer, Clause No. 10 reads as follows

“No employee shall be allowed to continue in the same place/town/branch for more than seven years.”

The Petitioner Union has taken an objection to this clause that it has got to be modified as an employee is liable to transfer on completion of ten years of service in the branch/centre irrespective of sex in order to accommodate the long pending request of the employees. They have further contended that this modification in the transfer policy is just and reasonable and as far as the other guidelines, there cannot be any dispute or difference between the parties to adopt the same. In addition to that, they have contended that two more guidelines have to be included to the request transfers as (1) the application received shall be classified into three categories as :

- (a) medical
- (b) verge of retirement, and
- (c) General.

and that the received applications shall be registered according to the date of receipt of the applications at the branch level and that (2) as and when vacancies arise in the branch/office/centre the pending applications shall be considered from each category in the ratio of 1 : 1 : 1. It cannot be disputed that the Management has effected transfers only because of requests for posting of clerical staff or because of vacancies arising consequent to promotion. As per the present policy of the Respondent/Management/Bank no employee shall be allowed to continue in the same place/branch for more than seven years. It is only after, such employees are subjected to transfer the other employees with lesser service are considered for transfer. This contention of the Respondent/Bank in their Counter Statement has not been disputed by the Petitioner Union as incorrect. It is the contention of the Respondent/Bank that any prescription of a minimum qualifying period of service to be considered for transfer is only reducing the number of employees, who could be considered for transfer and thereby it will only cause serious prejudice to the members of the clerical staff, who have for genuine reasons made a request for posting on a particular place has not been disputed by the Petitioner Union as an incorrect one.

5. The next contention of the Respondent/Management that the bank employees women who constitute approximately 20% of the clerical staff and those women were invariably posted to urban and semi-urban areas and they are not posted to branches situated in distant villages. If Clause 10 of the Transfer Policy is to be modified as suggested by the Petitioner Union that an employee is liable to transfer on completion of 10 years of service in a branch/centre, irrespective of sex, it will not be beneficial or convenient to the women employees. If in filling up the vacancies caused by request transfers from employees serving in distant villages with no possibility

of posting women employees, then the request transfers would be unduly delayed and thereby the employees with genuine reasons for posting to a particular reason will be seriously affected. It cannot be denied that if employees are allowed to stay in the same branch for ten years, there will be no scope to subject them to exposure to different environments or develop their skills and professional capabilities. Further, in adopting such a policy, an employee is not liable to be transferred on completion of ten years of service in a branch will frustrate the growth of bank. As per the present transfer policy under Ex. M1, the Respondent/Bank will definitely transfer a person, after seven years of service in a particular place/town/branch. It is also admitted that an promotion or on request transfer, an employee can be disturbed from his place of service within the stipulated period of service. Though the Petitioner Union has suggested that period of retention of a workman in the same place as ten years instead of seven years, no reason has been given by the Petitioner/Union to substantiate their stand to hold that it is against the interest of the workman. Further, for request transfer on genuine reason, somebody must be disturbed. Under such circumstances, the Petitioner Union cannot make a demand that the persons sought to be disturbed on this ground is not liable to transfer, since he has not completed ten years of service in that particular branch. The genuine reasons like an employee joining the spouse, parents' treatment, the place in which they served is lacking good treatment for the employees ill health, have got to be considered while effecting transfer of people to oblige the employees who request the transfer. That cannot be denied. When such being the case, fixing up of a term or period of ten years of service in a branch/centre, irrespective of sex, in order to accommodate long pending requests of employees, as suggested by the Petitioner Union cannot be considered as a favourable one for the employees themselves.

6. Further, as argued by the learned counsel for the Respondent/Bank, bank is not for the employees alone and it is for the best interest of the organization and its employees. The purpose of the policy adopted by the Respondent/Bank is to avoid arbitrariness and it cannot be for the convenience of the employees only. Ex. M5 is a statement of clerical staff, who were working in the branches more than ten years as on 30-9-2000. It is argued by the learned counsel for the Management that out of the total number of employees of 1925, 67 persons shown under Ex. M5 are only employees who had put in more than ten years of service in a particular place/centre. It is not disputed. It can be accepted that the transfers on medical ground comes under compassionate grounds and that has to be considered first.

For the vacancies caused due to retirement from service, for posting employees in those places on request transfer or on promotion, sufficient provisions have been made in the policy now adopted by the Respondent Bank/Management. It is represented on behalf of the Bank/Management that the applications received for transfers of the employees have been registered according to the date of receipt and they adopt the policy of 'first come first basis' and it is also stated that as and when they receive the applications for transfer they are duly registered and the number given to the same is duly intimated to the concerned employee. It is also not denied. So while adopting such methods, there cannot be any arbitrariness or unfairness or any victimization. Though it is alleged in the Claim Statement that the past history and the experience proved that the respondent had indulged in unfair labour practice by transferring the office bearers and members of the union to victimize them for their legitimate trade union activities and that the workman were subjected to transfers in the guise of administrative exigencies, no acceptable evidence has been placed before this Court to substantiate that stand. It is admitted that this transfer policy, came into force from 18-4-1988 is in vogue for the last twelve years. It cannot be denied that no employee can claim the right of choosing the place of work. Therefore, the power to transfer cannot be restricted to suit the requirements of the employees. Though it is alleged in the Claim Statement that the transfer policy adopted from the year 1988 by the Respondent/Bank has been violated by the Management, no particulars has been given by the Petitioner Union to substantiate that contention. No acceptable evidence has also been placed before this Tribunal to conclude that the Bank/Management has used its power arbitrarily in transferring the employees as a victimization. The demand made by the Petitioner Union that there should be minimum period of three years service before an employee could be considered for transfer and transfer should be made only to accommodate the requests is wholly unfair and unjustified, as it is contended by the Respondent in the Counter Statement. As per the transfer policy mentioned in Ex. M1, it is seen that sufficient safeguards are provided. So no exception can be taken to the policy adopted by the Respondent bank. The alterations demanded by the Petitioner Union will only put unreasonable restrictions on the managerial functions of the bank. No materials by way of substantial evidence is placed before this Tribunal in support of the allegation of the Petitioner Union in their Claim Statement that the Respondent Bank/Management did not adhere to the said guidelines/policy and the present transfer policy adopted by the Respondent Bank/Management is an unfair and unjustifiable one. So, under

such circumstances on the basis of the available materials in this case, this Tribunal can easily come to the conclusion that the alterations demanded by the Petitioner Union cannot be accepted, since it is wholly devoid of merits. So, it is found that the action of the Management of Lakshmi Vilas Bank Ltd., Karur in framing the transfer policy to their employees is fair and justified. Hence, the employees/union is not entitled to the relief prayed for. Thus, I answer the point accordingly.

7. In the result, an award is passed holding that the demand of the I Party/Union is devoid of merits and hence the claim of the I Party/Union is rejected as the I Party/Union is not entitled to the relief, as prayed for. No cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st June, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : NONE.

DOCUMENTS MARKED :

For I Party/Claimant :

Ex. No.	Date	Description
W1	17-01-90	Xerox copy of the Settlement between the I Party/Union and the Management.
W2	14-05-95	Xerox copy of the strike notice issued by the I Party/Union to the Management alongwith Annexures regarding transfer of 18 workmen.
W3	NIL	Copy of list of staff members (21 in numbers) Transferred on completion of 10 years service.

For the II Party/Management :

M1	18-04-88	Xerox copy of circular No. 26 of 88 (Transfer Policy for Award staff).
M2	NIL	Xerox copy of statement showing number of Branches/Officers Division-wise as on 30-9-2000.
M3	NIL	Xerox copy of the statement showing number of Clerical staff Division-wise and sex-wise as on 30-09-2000.
M4	NIL	Xerox copy of statement showing recruitment of Clerical staff year-wise.
M5	NIL	Xerox copy of statement showing clerical staff working in branches year-wise for more than 10 years.

नई दिल्ली, 31 जुलाई, 2001

AWARD

का. आ. 2166.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 में, केन्द्रीय सरकार कर्नाटक बैंक लिमिटेड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/78/90-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S. O. 2166.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Karnataka Bank Limited and their workman, which was received by the Central Government on 30-7-2001.

[No. L-12012/78/90-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"Shram Sadan",
G. G. Palya, Tumkur Road,
Yeshwantpur, Bangalore-560022.

DATED : 5th JULY 2001

PRESENT : HON'BLE V. N. KULKARNI
PRESIDING OFFICER

C.R.No. 29/90

I Party

Shri S.L. Rajanna,
C/o General Secretary,

Dharwad District Bank
Employees Association,
No. 9,
Corporation Building,
Broadway,
Hubli.

APPEARANCES :

I Party : M. Ram Rao,
General Secretary

II Party : V.H. Upadhyaya
Advocate

II Party

The Chairman,
Karnataka Bank
Limited,
Head Office,
Kodialbale,
Mangalore 575 003.

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/78/90-IR.B.II dated 14-05-1990 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Karnataka Bank Limited, in dismissing Shri S. L. Rajanna, Attender of Chickmangalour branch w.e.f. 17-4-89 is justified? If not, to what relief the said workman is entitled to?"

2. I party was working with the II Party I party committed misconduct. Charge sheet was issued and enquiry was held. On the basis of the Enquiry report, the I party workman was dismissed and therefore this Industrial dispute is raised.

3. Parties appeared and filed claim statement and counter statement respectively.

4. The case of the I party in brief is as follows :

5. That the I party joined the services of the II party as temporary sub staff in December 1969 and he worked sincerely and honestly. His service were confirmed. The I party has been an action trade union worker and the management transferred him from Chickodi to hubli in order to harass him. He was suspended. Charge sheet was issued and enquiry was held.

6. So far as the enquiry is concerned, it is said that the same is against the provisions of Bipartite Settlement and principles of natural justice. I party has explained in detail as to how the enquiry is not fair. It is the further case of the I party that the Enquiry report is not correct and the punishment is illegal, and therefore it is prayed to pass award in favour of I party.

7. The case of the II party in brief is as follows :

8. That the I party was working as attender in Chickodi and he was not sincere and honest in working and he made false entries in the register, forging the initials. He was kept under suspension. Enquiry was held against him.

9. So far as the enquiry is concerned, the case of the management is that the enquiry is proper and legal. Full opportunity was given and he participated in the enquiry. He was given full chance. It is the further case of the management that the action of the management is correct.

10. It is seen from the records that the Domestic Enquiry was held fair and proper because I party filed memo conceding Domestic Enquiry. There

after mater was posted for arguments and I have heard both sides in detail.

11. I have perused all the enquiry papers and documents. The I party has filed written arguments and I have gone through the same. The main argument of the I party workman is that, according to Bipartite settlement, the management was not justified in transferring sub staff. So far as enquiry it is said that chance was not given to I party. It is a fact that the enquiry is conceded by the I party as fair and proper and, therefore, there is no merit in the said contention with arguments.

10. In my opinion, the management has proved the misconduct, and the enquiry papers and documents of the management are sufficient to say that the misconduct is proved and there is no merit in this reference. Much was made and argued that the enquiry is not proper and report of the Enquiry Officer is perverse. I am of the opinion that there is no merit in this contention. The enquiry papers and the material discloses that the management has proved misconduct and having said that the Domestic Enquiry is fair and proper, this court has little discretion to reconsider all about the enquiry. In view of these facts, I am of the opinion that there is no merit in this reference.

11. Accordingly, I proceed to pass the following order :

ORDER

Reference is rejected.

(Dictated to the L. D. C. transcribed by him, corrected and signed by me on 5th July 2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का. अ. 2167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार सदर्न रेलवे के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अन्वय में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/थम न्यायालय चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[सं. एल-41012/138/95-आई.आर. (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O.2167.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai at shown in the Annexure in the Industrial

Dispute between the employers in relation to the mangement of Southern Railway and their workman, which was received by the Central Government on 31-7-2001.

[No. L-41012/138/95-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 29th June, 2001

Present : K. KARTHIKEYAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 409/2001

(Tamil Nadu State Industrial Tribunal I.D.No.97/96)

(In the matter of the dispute for/adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri C. Kuppusamy and the Management of The General Manager, Southern Railway.)

BETWEEN

Sri C. Kuppusamy : I Party/Workman

AND

The General Manager, : II Party/Management
Southern Railway,

Appearance :

For the Workman : Sri A. Mani,
Advocate

For the Management : Sri P. Arulmudi,
Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No.L-41012/138/95-IR(B.I) dated 29-10-96.

This reference has been made earlier to the Tamil Nadu Industrial Tribunal, where it was taken on file as I.D. No. 97/96. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 409/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 22-2-2001 with their respective parties. On receipt of notice from this Tribunal, both the parties with their respective counsel on record appeared and requested time to prosecute the case further.

Subsequent to the filing of vakalat by the advocate for the I Party/Workman in the place of the authorised representative on 12-3-2001, neither the I Party nor his counsel ever appeared before this Court, till the matter is posted finally for enquiry on 21-6-2001.

When the matter came up before me for final hearing on 21-06-2001 for enquiry, as usual, both the I Party and his counsel remained absent. There was no representation for the I Party/Workman. The counsel for the II Party was present and informed the Tribunal that he has got one witness to be examined. So, one Mr. R. Muthusamy, Assistant Personnel Officer, Southern Railway, Chennai Division in the office of the Southern Railway/II Party/Management was examined as MW1. Out of the documents already filed in this case on the side of the I Party/Workman, two documents have been marked with the consent of the counsel for the II Party as exhibits W1 and W2. On the side of the Management, one document has been marked as Ex. M1. Since the I Party/Workman and his counsel remained absent, the only witness examined on the side of the Management has not been cross examined. For want of representation on the side of the I Party/Workman and no one was present to cross examine MW1 on behalf of the I Party/Workman, it was held as 'no cross'. It is also recorded that as no evidence for the I Party/Workman the arguments advanced by the learned counsel for the II Party/Management was heard. Upon perusing the Claim Statement, Counter Statement, the other material papers on record, upon perusing the oral and documentary evidence let in on the side of the Management and upon hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :

"Whether the action of the Management in terminating the services of Sri C. Kuppusamy is legal and justified? If not, to what relief the workman is entitled?"

2. The Industrial Dispute between the parties as stated in the Claim Statement is briefly as follows :

The I Party/Workman Sri C. Kuppusamy (hereinafter referred to as Petitioner) was engaged initially as a casual labour on daily basis with effect from 23-11-1977. He was granted temporary status on completion of four months continuous service. The Petitioner served at Jolarpet for a period of ten years

Subsequently, he fell ill during the period from 4-5-88 to 4-8-88 and remained in sick list upto 15-3-1989. When he produced the medical certificate for regularizing the sick period of leave, he came to know that his name was removed from the rolls of Loco Foreman, Jolarpet. His removal from service is against the principles of natural justice, since no notice was given to him and no enquiry was conducted for any alleged misconduct. The appeal he preferred to the Appellate Authority and the Review Authority were also ended in failure. A co-worker Sri Antony of Mechanical Department, Thondiarpet, Marshalling Yard, who was removed from service was taken back to duty with all consequential benefits. As per the orders passed by the Central Administrative Tribunal, Madras Bench in O.A. No. 144/1989 and the denial of similar benefits to the Petitioner by the Respondent/Management amounts to unfair labour practice. The Respondent/Management has not obtained prior permission from the competent authority before imposing major penalty. The action of the Respondent is not in good faith but in colourable exercise of power. Hence the action of the Management in removing him from service is illegal and justified and the same has to be set aside, with a direction to the Respondent/Management to reinstate the Petitioner/Workman in service with back wages and all other consequential benefits.

3. The II Party/Management has filed a Counter Statement denying the averments in the Claim Statement of the Petitioner. It is further contended in the Counter Statement that the Petitioner has filed a Civil Claim Petition before the Central Govt. Labour Court vide CCP No. 67/96 raising similar claims and hence the matter is res subjudice. The Petitioner has filed that petition claiming for certain monetary benefits for the period he was not employed by the II Party/Management and for the period for which he is not rightly entitled to. The Petitioner was engaged as casual labour on daily rate of pay with effect from 23-11-1977 and not as 'Kalashi'. He was granted temporary status on completion of four months continuous service with effect from 23-3-1978. He was granted only temporary status and was not absorbed or empanelled into the regular service. The Petitioner had absented himself unauthorisedly from 4-5-1988 to 4-8-1989 and hence, he was deemed to have resigned from service as per note 2 of exception 2 of Rule 732 (R-1) Indian Railway Establishment Code. As per Indian Railway Establishment Manual Rule 521(1) an application for leave on medical certificate made by the Railway employee shall be accompanied by the medical certificate given by a Railway Medical Officer defining as clearly as possible the nature and duration of illness. When a railway servant residing outside the jurisdiction requires leave on medical

certificate, he should submit within 48 hours, a sick certificate from the Registered Medical Practitioner. Such a certificate should state the nature of the illness and the period for which the railway servant is likely to be unable to perform his duties. The competent authority may, at his discretion, accept the certificate or in case that it has reasons to suspect the bonafide, refer the case to the Divisional Medical Officer for advice or investigation. In the present case, the petitioner had not adhered to. In a department like Railways, which works round the clock unauthorized absence for long periods leads to serious problems, which has to be dealt with severely. Since the petitioner had remained absent unauthorisedly, he was deemed to have resigned from service as per Rule 732(1). The Central Administrative Tribunal in O.A. 144/1989 had directed the administration to reinstate Sri S. Antony, the applicant therein without any arrears of salary but with continuity of service. The same does not apply to the Petitioner herein for obvious reasons that the case O.A.No.144/89 was taken up immediately by the employee after the issuance of termination order and the above said Tribunal found the reasons for his absence as genuine. The Petitioner herein as he had slept over his rights until 1993 and then raised the issue before the Assistant Labour Commissioner (Central), Chennai. As the conciliation ended in a failure, the Assistant Labour Commissioner (Central) Chennai, had sent a failure report. Hence, this reference has been made by the Govt. to this Tribunal for adjudicating this case. The Petition is devoid of merits. Hence, it may be dismissed.

4. The point for my consideration is--

"Whether the action of the Management in terminating the services of Sri C. Kuppusamy is legal and justified? If not, to what relief the workman is entitled?"

Point :--

The Petitioner/Workman Sri C. Kuppusamy was engaged as casual labour on daily wage basis with effect from 23-11-1977. The service book of the Petitioner has been produced by MWI as Ex. M1. From the first entry available in the service book Ex. M1, it is seen that the Petitioner was initially engaged as a casual labour on daily rates on 23-11-1977. The avowment of the Petitioner in his Claim Statement that he was recruited as a 'Khalashi' on 23-11-1977 is factually incorrect. It is the evidence of MWI that all the particulars about the service, pay, increments and other punishments awarded to the Petitioner are mentioned in Ex. M1, his service register. A perusal of Ex. M1 clearly shows that the Petitioner remained unauthorized absent for 225 days

during 1982 to 1983. The punishment awarded to the petitioner for his unauthorised absence have been entered in his service book Ex. M1 in red ink. From the entries in the service book of the petitioner, it is seen that during the year 1985 he remained absent for 86 days and during 1985-86, he remained absent for 248 days and again he absented himself from duty for 117 days from 27-3-87 to 21-07-87. Then subsequently, he remained absent unauthorisedly for more than three months at a stretch. So he was deemed to have resigned from service with effect from 4-8-88. All these things are mentioned as entries in his service book Ex. M1. It is the evidence of MWI that because of the unauthorised absence of the Petitioner from duty for more than 90 days he was deemed to have resigned his appointment and case to be a railway employee as per rule 732 of Indian Railway Establishment Rules. From the entries available in the service register Ex. M1, it is seen that the Petitioner/Workman is a habitual absented from duty and his unauthorised absence have been dealt with by the Respondent/Management by imposing punishment for the same. The Leave Rules meant for Indian Railway Establishment has been mentioned under Rule 732. Under that leave rules under Exception 2 Note (ii) it is stated as follows : -

"Where a temporary railway servant, fails to resume duty on the expiry of the maximum period of extra-ordinary leave granted to him or where he is granted a lesser amount of extra-ordinary leave than the maximum amount admissible and remains absent from duty for period which together with the period of extra-ordinary leave granted exceeds the limit upto which he could have been granted, such leave under sub-rule (1) above, he shall unless the President, in view of the exceptional circumstances for the case, otherwise, determines be deemed to have resigned his appointment and shall accordingly cease to be in railway employee."

Invoking this rule provision, the II Party/Management had passed an order on 27-12-1998 stating the Petitioner and other employees, similar unauthorised absentees, were deemed to have resigned from service. The xerox copy of that order has been produced into Court on the side of the Petitioner. In that the Petitioner's name has been mentioned as serial number 3, under token No. 161. It is mentioned in that order that the Petitioner was continuously absent from 4-5-88 and on 4-8-88, he was treated as deemed to have resigned. It has been marked as Ex. W1. It is the further evidence of MWI that

an employees Sri Antony mentioned as person under serial No. I in Ex. W1 immediately approached the Central Administrative Tribunal and got an order for reinstatement, since he established that he was absent due to ill health. He would further say that the Petitioner has raised this industrial dispute seven years later in 1995 and has also filed claim petition earlier in Labour Court claiming wages. That Claim Petition is still pending and hence the Petitioner/Workman is not entitled for reinstatement of service and other relief prayed for. This evidence of MWI remains un rebutted. It is seen from the records available in this case that the Petitioner is a frequent absentee for duty. He has also failed to follow the procedures mentioned under rules, while availing leave on medical grounds. As per Indian Railway Establishment Manual Rule 521 (I) an application for leave on medical certificate made by the railway employee shall be accompanied by a medical certificate given by a Railway Medical Officer, stating as clearly as possible the nature and duration of illness. If the railway servant resides outside the jurisdiction, and requires leave on medical certificate, he should submit within 48 hours a sick certificate from the Registered Medical Practitioner stating the nature of illness and the period for which the Railway Servant is likely to be unable to perform his duties. This procedure has not been adopted by the Petitioner/Workman, when he absented from duty on the alleged ill health. Further the Petitioner/Workman had chosen to raise this issue as an industrial dispute before the Assistant Labour Commissioner (Central) at Chennai only on 30-11-1993 about five years after Ex. W1 order passed by the II Party/Management. The xerox copy of that petition filed by the I Party/Petitioner has been filed as a document on his side. All these things go to show that the petition filed by the I Party/Workman questioning the action of the Management in terminating his services is devoid of any merits. The available materials on record in this case as oral and documentary evidence clearly proves that the action of the Management in terminating the services of Sri C. Kuppasamy is legal and justified and he is not entitled to any relief. Thus, I answer the point accordingly.

5. In the result, an award is passed holding that the I Party/Workman/Petitioner is not entitled to any relief, since the action of the Management is justified in terminating the service of the Petitioner Sri C. Kuppasamy. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me

in the open court on this day the 29th June, 2001).

K. KARTIKEYAN, Presiding Officer

Witnesses Examined :

For the I Party/Workman :

None :

For the II Party/Management :

M. W. 1 Shri R. Muthusamy

DOCUMENTS MARKED :

For I Party/Workman :

Ex. No.	Date	Description
W1	27-12-88	Xerox copy of letter of Senior Divisional Personnel Manager regarding unauthorised absence of CPC/CLs for more than 3 months.

W 2	21-06-95	Xerox copy of failure of conciliation report of the Regional Labour Commissioner (C), Madras.
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For the II Party/Management :

M 1	Nil	Original service book of Sri C. Kuppasamy.
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नई दिल्ली, 1 अगस्त, 2001

का. आ. 2168—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कर्नाटक बैंक लिमिटेड के प्रबंधन के संबंध में निर्यातों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अभ्युक्त के माध्यम से विवाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/32/84/डी-आई बी (ए)-आई आर बी-III/आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S. O. 2168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the Employers in relation to the management of Karnataka Bank Ltd. and their workman, which was received by the Central Government on 31-7-2001.

[No. L-12012/32/84/D. IV (A)-1R-B,-III/1R (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR
COURT

‘SHRAM SADAN’, III MAIN, III CROSS,
II PHASE, TUMKUR ROAD,
YESHWANTHPUR, BANGALORE

Dated : 19th July, 2001

PRESENT

HON'BLE SHRI V. N. KULKARNI, B. Com LLB
PRESIDING OFFICER
CGIT-CUM-LABOUR COURT,
BANGALORE

C. R. No. 62/92

AWARD

I PARTY

Shri Ashok S. Hegde,
Son of Shri Suryanarayana Hegde,
Jayashree Nivas,
Yellapur Road,
Sirsi,
North Kanara Dist.
(Advocate Shri N. G. Phadke)

II PARTY

The Chairman,
Karnataka Bank Ltd.,
H. O. Mangalore,
Mangalore-575003
(Advocate-Shri Ramesh Upadhya)

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 1 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/32/84/D. IV (A)-IR B. III dated 20-7-1992 for adjudication on the following schedule.

“Whether the action of the Management of Karnataka Bank Ltd. in dismissing Shri Ashok S. Hegde vide order No. PIR : 13364/78 dated 1-12-78 was justified ? If not, to what relief the workman is entitled to” ?

2. The first party was working with the second Party. Charge Sheet was issued for misconduct and enquiry was held. On the basis of enquiry report first party was dismissed from service and therefore this industrial dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the Second Party in brief is as follows :

5. The first party joined the services of the Second Party Bank as Clerk and was working as a Cashier in the month of August 1977 at Haveri Branch of the Second Party and he had rendered

sincere and honest services in the Second Party and there is no adverse remark against him regarding his services.

6. It is the further case of the first party that on 5-8-1977 one Shri A.A. Khan presented a cheque for Rs. 5,000/- bearing No. 530295 drawn by one Shri L. D. Kamat, who was also a customer of the Second Party Bank. At the time when cheque was presented by Shri Khan, the acting manager had gone out and since Shri Khan represented that he wanted to encash the cheque urgently as Shri L. D. Kamat needed the money immediately, the first party disbursed the amount of Rs. as per the cheque. When the said cheque was presented for encashment, there was heavy rush in the Bank. The first party did not suspect the genuineness of the cheque as the entry regarding the presentation of the cheque was made by the ledger clerk and as the said Shri Khan used to present the cheques of Shri L. D. Kamat very often.

7. It is the further case of the first party that the acting manager on his return to the office has informed the first party that he has suspected the genuineness of the signature of Shri L. D. Kamat on the cheque and that the signature must have been forged. Shri Khan returned the money which he had collected by presenting the said cheque and the same was credited to the account of Shri L. D. Kamat. The first party acted in a bona fide manner and acted to safeguard the interest of the Bank and collected the money from the said Shri Khan at the risk of his life. Shri Khan in a deceitful manner and by misrepresentation received the amount from the Bank by presenting the cheque. First Party made sincere effort and got the money back.

8. In view of the above facts the punishment of dismissal is too harsh and the enquiry officer is not correct therefore, the first party has prayed to pass award in his favour.

9. The case of the Second Party in brief is as under :

10. It is an admitted fact that the first party was working since August, 1977. He was not a sincere and honest worker. The allegations made by the first party are not correct. Enquiry was conducted by complying with all the provisions of the Service Rules and the principles of natural justice. The enquiry officer submitted a report holding that the first party is guilty of the charge of fraudulent withdrawal of a sum of Rs. 5000/- from the account of a customer of the bank by name Shri L. D. Kamat. He was rightly dismissed after giving salary.

11. The allegation of the first party that the said Khan represented that he wanted to encash the cheque urgently and he did not suspect the genuineness of the cheque and that Khan used to present the cheque of L. D. Kamath are incorrect.

12. The management for these reasons has prayed to reject the reference.

13. It is seen from the records that this court by its order dated 2nd March 1999 is held that the Domestic Enquiry is fair and proper. Thereafter the matter was posted for arguments on merits.

14. I have heard both sides in detail. I have perused the evidence and citations given by the learned counsel for the first party.

15. MW 1 has given detailed evidence about the D.E. The first party workman has given evidence saying that the enquiry is not correct and he wanted to produce letter from Shri Khan but that was not allowed.

16. Now this court has held that the enquiry is fair and proper.

17. It was vehemently argued by the learned counsel for the first party that in the instant case there is no loss to the bank and by over sight the cheque was encashed by Khan and Subsequently the first party made all sincere efforts to secure Khan and deposited the amount in the account of Shri Kamat and therefore the punishment of dismissal is too harsh and this court can take any lenient view and punishment of dismissal can be set aside.

18. In support of this arguments he relied the following decisions :

- (i) 1984 (2) LLJ-203
- (ii) 1978 (2) SC cases 42
- (iii) 1982 (3) Supreme Court Cases 346
- (iv) 1984 (2) Supreme Court Cases 569
- (v) 1988 (73) FJR 474

19. I have read the above decisions carefully. He also relied 1984 LAB IC NOC 6 (GUJ.) decision. In order to appreciate this argument, I have carefully perused all the enquiry procedures before the court. The management has not established that the sum of Rs. 5000/- was not credited immediately in the account of L. D. Kamat.

20. In my opinion on perusing the enquiry papers and materials placed before the enquiry officer, it is not established that the first party fraudulently permitted to encash the cheque.

2497 GI/2001-12

21. Keeping in mind the principles held in the above decisions, I am of the opinion that this is a fit case in which the management can be directed to reinstate the first party in his original post from the date of dismissal. Accordingly I proceed to pass the following order :

ORDER

The reference is partly allowed and the order of dismissal is set aside. The management is directed to reinstate the first party with continuity of service from the date of dismissal and in the given circumstances no back wages are allowed.

(Dictated to PA transcribed by her corrected and signed by me on 19th July, 2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का. आ. 2169—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/33/98—आई आर (बी-1)]

[सं. एल-12012/35/98—आई आर (बी-1)]

[सं. एल-12012/34/98—आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2169.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Mysore and their workman, which was received by the Central Government on 31-7-2001.

[No. L-12012/33/98-IR (B-I)],

[No. L-12012/35/98-IR (B-I)],

[No. L-12012/34/98-IR (B-I)]

AJAY KUMAR, Desk Office

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT

"SHRAM SADAN"

III, MAIN, III CROSS, II PHASE, TUMKUR
ROAD, YESHWANTHPUR, BANGALORE

Dated 19th July, 2001

Present

HON'BLE SHRI V. N. KULKARNI, B.Com, LL.B.

Presiding Officer

CGIT-CUM-LABOUR COURT,
BANGALORE

C.R. NO. 77/98

I PARTY

Shri M. Y. Maruti,
C/o. The General Secre-
tary,
Dharwad District Bank
Employees Association,
9 Corporation Building
Broad Way,
Hubli 20
(Advocate Shri M. Rama
Rao).

II PARTY

The Regional Manager,
State Bank of Mysore,
Hubli 20
(Advocate Shri R.
Narayana).

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/33/98-IR (B-I) dated 1-9-98 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of State Bank of Mysore in terminating the services of Shri M. Y. Maruti w.e.f. 30-12-95 is justified ; If not, what relief the concerned workman is entitled to ?"

C.R. No. 78/98

I PARTY

Shri Girish Kulkarni,
C/o. The General Secre-
tary,
Dharwad District Bank
Employees Association,
9 Corporation Building
Broad Way,
Hubli 20
(Advocate Shri M. Rama
Rao).

II PARTY

The Regional Manager,
State Bank of Mysore,
Hubli 20
(Advocate Shri R.
Narayana).

AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/35/98-IR (B-I) dated 28-8-98 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of State Bank of Mysore in terminating the services of Shri Girish Kulkarni w.e.f. 30-12-95 is justified ? If not, what relief the concerned workman is entitled to ?"

C.R. No. 79/98

I PARTY

Shri G. K. Laxman,
C/o. The General Secre-
tary,
Dharwad District Bank
Employees Association,
9 Corporation Building
Broad Way,
Hubli 20
(Advocate Shri M. Rama
Rao).

II PARTY ..

The Regional Manager,
State Bank of Mysore,
Hubli 20
(Advocate Shri R.
Narayana).

AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. (L-12012/34/98 IR (B-I) dated 28-8-98 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of State Bank of Mysore in terminating the services of Shri G. K. Laxman w.e.f. 30-12-95 is justified ? If not, what relief the concerned workman is entitled to ?"

COMMON AWARD

2. It is seen from the records of these 3 references that a request was made to club these 3 cases and evidence is also recorded as common evidence and common arguments were advanced by the parties and requested to dispose off these 3 references by clubbing them because the dispute is one and the same.

3. With this background the award is passed in CR 77/98 with a direction to keep a copy of this in CR No. 78/98 and CR No. 79/98.

4. In CR No. 77/98 the first party was working with the second party as sub staff and he is terminated therefore dispute is raised and reference is made.

5. Parties appeared and filed Claim Statement and Counter respectively.

6. I have carefully perused the Claim Statement given by the 3 workmen. Similar allegations are made in all the paras of the Claim Statement. In order to dispose off these three disputes the case of the workmen in brief is as under :

7. In CR No. 77/98 the request is to set aside the termination order w.e.f. 30-12-95. The same is the prayer in two other cases.

8. In CR No. 77/98 the first party joined the services of the second party as sub staff in a clear vacancy from 28-2-1995 and he worked continuously upto 30-12-1995.

9. In CR No. 78/98 the first party joined the services of the second party at its Davangere Mandipet Main Branch as Sub Staff on 13-7-1993.

10. In CR No. 79/98 the first party joined the services of the second party at its Davangere Mandipet Main Branch as Sub Staff on 18-1-1993 in a clear vacancy of sub staff.

11. Case of the first party workmen in all these cases that they worked from 8.30 AM to 7 PM with a break of half an hour rest on all the working days. They also worked on many Sundays and Public holidays without any payment.

12. In CR.No. 77/98 the first party was paid Rs.35/- per day for about first eight months of his service and then at Rs.45/- per day.

13. In CR.No. 78/98 the first party was paid Rs.25/- per day for about six months of his service and then at Rs.30/- per day so as also the same payment was made in CR.No.79/98.

14. It is the further case of the workmen that they were not paid any over time wages for extra hours of work done by them as per para 2 of the Claim Statement.

15. It is the further grievance of the workmen that on 29-12-1995 the Branch Manager informed them that the Regional Manager directed him not to continue the services of them from 30-12-1995.

16. It is their common grievance that they were not given any notice or compensation or arrears before termination.

17. It is their further case that they made many representations but nothing was done. They have stated it in para 5 and 6 of the Claim Statement about conciliation proceedings. They have prayed to pass award in their favour by setting aside the termination order.

18. I have carefully perused the counter filed by the management in all the 3 cases and the ground given are similar.

19. The main contention of the management is that all the allegations made by these 3 workmen are false except the fact that they were taken for work during the year 1993, 1994 and 1995. It is not correct that they have continuously worked. It is also not correct that they have worked from 8.30 AM to 7 PM. It is not correct to say that they have worked on holidays.

20. Further contention of the management is that they were working as Casual employees on temporary basis and they were paid casual daily wages. The payment of bonus, leave with wages etc. does not arise. The wages were accounted as Sundry Expenses. The first party workmen might have signed the peons Delivery Book on such days when he worked on casual basis. It is false that the manager called them and directed to discontinue the work. They are not terminated because they were not employees at all.

21. In Cr.No.77/98 the workman had worked only 235 days in a block of 12 months and in CR.No.-78/98 the workman had worked only for 98,235 and 135 days during 1993, 1994 and 1995 as stated in para 3 of the Counter as temporary casual worker.

22. In CR.No. 79/98 the workman had worked only for 94,16 and 193 days during 1993, 1994 and 1995 respectively.

23. Further contention of the management is that they have not worked continuously for 240 days and the question of Seniority etc. does not arise for temporary casual workmen. The first party workmen are not entitled for any relief. The management in these 3 cases have prayed to reject the reference.

24. I have already said that common evidence be recorded. On behalf of the management MW1 & MW2 are examined. On behalf of the 3 workmen Shri G. K. Lakshmana was examined as WW1 and gave a common evidence.

25. We have the evidence of MW1 & MW2 who have categorically stated that the workmen have not worked for more than 240 days in any given year. MW2 has said that the work used to be given them during the bank hours. They were working between 10.30 A.M. to 5.30 P.M. and the occasions they have worked for extra hours is not correct. So also is the evidence of MW1. In the evidence of MW1 certain documents were marked. I have carefully perused all those records consisting of vouchers for having paid wages to the workmen.

26. Against this WW1 has stated that he worked from 18-1-93 to 29-12-95, Girish Kulkarni worked from 13-7-93 to 29-12-95 and M. Y. Maruthi from 28-2-95 to 29-12-95. He has said that management has engaged him from 8.30 A.M. to 8.30 P.M.

27. Before I proceed further I may say here that there is no consistency in the evidence of WWI and the stand taken by them in the Claim Statement.

28. I have perused all the documents carefully Management has filed Written Argument. I have read them carefully. I have heard the union leader who appeared for these workmen in detail.

29. In these 3 references at the very outset I am of the opinion that there is no clear and cogent evidence to establish that these workmen have worked for 240 days continuously as required.

30. WWI has stated in his cross examination that he used to have the working hours from 10.30 A.M. to 6:30 P.M. This shows that the allegations made by these workmen that they have worked overtime is not correct.

31. He further stated that it is true that on the reverse portion of the vouchers the number of days worked by each of them was indicated. Ex. M7 and Ex. M8 are the proof of days worked by each of them was indicated.

32. Absolutely there is no clear evidence that these workmen have worked for 240 days continuously. The documents marked are not helpful to the allegations made by the workmen. It is an admitted fact that they were taken as casual workers as kept staff and they have not joined bank as employees in accordance with the Recruitment Rules. There is no material before us to substantiate the claim of the workmen that they have worked continuously for more than 240 days. Ex. W1 will not help the workmen to prove anything. It is a book and zerox copy which is meant for delivery of local letters which are acknowledged by the addressee by signing books.

33. WWI has stated in his cross examination that the book is entrusted to the workmen for delivery of letters. The documents produced by the management are sufficient to say that none of the workmen worked even 240 days in a block year of 12 months and as such the question of issuing notice, compensation etc. does not arise at all.

34. I have considered the entire material and the evidence carefully and I am of the opinion that there is no merit in this references and accordingly I proceed to pass the following order :

ORDFR

Reference Nos. 77/98, 78/98 and 79/98 are rejected. (Dictated to P.A. transcribed by her corrected and signed by me on 19th July, 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का. आ. 2170—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबन्धतंत्र के सबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबद्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/अलापुजा के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[स. एल-12012/188/99-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2170.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Alappuzha as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 31-7-2001.

*[No. L-12012/188/99-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA

(Dated this the 21st day of July 2001)

PRESENT :

M. N. RADHAKRISHNA MENON

INDUSTRIAL TRIBUNAL

I. D. No. 72/99 (C)

BEETWEEN

The Deputy General Manager, State Bank of India,
Zonal Office, Trivandrum, Kerala State

And

The workman of the above concern represented by
Smt. Annamma Mammen, Ilavumkandathil Veedu,
Pyvally Bhagom, Omalloor village, Kozhencherry
Taluk, Pathanamthitta Dist.

Representations :

Sri. V. K. Rammohan Das, : For Management
& C. Parameshwaran,
Advocates,
Alappuzha

Sri. P. K. Sadanandan, : For workman
Advocate,
Alappuzha

A WARD

1. The Government of India has referred this Industrial Dispute between the above parties in respect of the following issues for adjudication to this Tribunal as per their order No. L 12/12/1330 - I.R. (B-I).

“Whether the action of the management of State Bank of India in relation to their pathanamthitta Branch in terminating the services of Smt. Annamma Mammen, Sweeper with effect from 6-11-1997 is justified? If not, to what relief she is entitled to?”

2. The claim of the worker is that she has been working in pathanamthitta Branch of the State Bank of India on permanent basis from 1987 onwards carrying out the works of a sweeper and such other works allotted to her from time to time. She was disbursed wages by obtaining her signature in vouchers. While so, she was denied employment from 6-11-1997 without assigning any reason. This amounts to termination of her services. It is arbitrary, illegal and opposed to principles of natural justice. Therefore, the worker prayed for passing an award setting aside her termination and directing the management to reinstate her in service with full back wages and other consequential benefits.

3. The contention of the management is that Smt. Annamma Mammen was a casual worker engaged for some odd jobs such as arranging the stationery, purchase of cool drinks, tea etc., for customers. She was not recruited observing any of the recruitment procedures of the Bank. She has not worked for 240 days in any year. She has not vested right of employment. Her disengagement is not vitiated on any score. Therefore, the management prayed for passing an award accepting the contentions of the management and rejecting the claims of the worker.

4. Evidence in this case consists of oral evidence of WW1 & MW1 and Exts. W1 to W3 and Exts. M1 series 1 to 128 and M2.

5. From the rival contentions of parties, the issue that arises for my consideration is whether the termination of the worker from the services of the Bank is sustainable or not? What can be relief that the worker be granted to in the facts and circumstances of the case.

6. The Point :

It is the case of the worker that she was appointed as a Sweeper in the Bank. But she has not produced any appointment order. She has clearly admitted in her evidence as WW1 that she was not issued any appointment letter by the management. It is clearly admitted in her evidence as WW1 that there is a permanent sweeper attached to the Bank. Therefore, her claim that she was working as a permanent

sweeper cannot be accepted. The worker has not made out that she has worked for 240 days in any year. She has also not made out that her engagement was based on any recruitment norms. The management has produced Ext. M1 series vouchers 1 to 128 which evidence that the engagement of worker was casual and wages were paid to her on daily rate basis after obtaining her signature in the vouchers. Ext. M2 is the establishment register where the name of the worker does not find a place. Thus the overwhelming materials on record make out the case of the management that she was only a casual worker in the Pathanamthitta Branch of the Bank. Her engagement was made intermittently and sparingly. Ext. W3 is a statement submitted by the management before the Assistant Labour Commissioner (Central) on 13-5-1999 wherein it is set out that she was engaged for 511 days during the period from 1987 to 1997. As set out above, it is not made out that she has worked for 240 days in any year. Such an employee has no continued right of employment as per Industrial Law. So her disengagement from 6-11-1997 is not vitiated by law in any manner. Therefore, she cannot be awarded reinstatement or back wages or any such reliefs. She has been working in the Bank, though casually and intermittently, from 1987 to 1997. She has been prosecuting the claim all along on the bonafide belief that she has got some vested rights. Considering all these aspects and purely as a measure of compassion, I direct the management to give 15 days wages per year from 1987 to 1997 as ex-gratia. It is clearly set out in her claim statement that she was getting Rs. 45/- per day lastly which is not disputed by the management. Thus she shall be given 150 days wages at the rate of Rs. 45/- per day, which will come to Rs. 6,750/-.

7. In the result, an award is passed holding that the termination of service of Smt. Annamma Mammen with effect from 6-11-1997 is not vitiated by law in any manner but directing the management to give Rs. 6,750/- as ex-gratia as a compassionate measure.

(Dated this the 21st day of July, 2001).

M. N. RADHAKRISHNA MENON Industrial
Tribunal

APPENDI X

I.D. No. 72/99 (C)

Witness examined on the side of the management :

MW1 V. V. Kunju.

Witness examined on the side of the workman :

WW1 Annamma Mammen.

Exhibits marked on the side of the management :

M1 Receipts & vouchers being cost
(Series 128 Nos.) of labour charges for the
year 1993 & 1995 paid by the
management Bank.

M2 Copy of the establishment charges Register for the period from 1993 to 1996 maintained by the management Bank.

Exhibits marked on the side of the workman :

W1 Failure of conciliation Report No. 7(15)/98/ALC/TVM dated 18-5-99 of the Assistant Labour Commissioner (Central), Trivandrum.

W2 Letter No. 02169/187 dated 8-12-98 sent by the management bank to the Assistant Labour Commissioner (Central), Trivendrum.

W3 Letter No. 294/14 dated 13-5-99 sent by the management Bank to the Assistant Labour Commissioner (Central), Trivendrum.

नई दिल्ली, 3 अगस्त, 2001

का. आ. 2171—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बक्षिणी रेलवे के प्रबन्धतंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच, अनबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-8-2001 को प्राप्त हुआ था।

[सं. एल-41012/90/94-आई. आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 3rd August, 2001

S.O. 2171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway and their workman, which was received by the Central Government on 2-8-2001.

[No. L-41012/90/94-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 16th July, 2001

Present : K. KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 416/2001

(Tamil Nadu State Industrial Tribunal I.D.No.112/96)
(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri P. Kulasekaran and the Management of the General Manager, Southern Railway.)

BETWEEN

Sri P. Kulasekaran I Party/Workman

AND

The General Manager, : II Party/Management
Southern Railway,

Appearance :

For the Workman : M/s. T. Fenn Walters,
D. Geetha and
J. Soundarichandrasekar Advocates

For the Management : Sri P. Arulmudi,
Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-41012/90/94-IR(B.1) dated 19-7-95.

This reference has been made earlier to the Tamil Nadu Industrial Tribunal, where it was taken on file as I.D. No. 112/95. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 416/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 23-2-2001 with their respective parties. On receipt of notice from this Tribunal the counsel on record on either side were present along with their respective parties and prosecuted this case further.

This matter came up before me for final hearing on 15-06-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, upon perusing the oral and documentary evidence on the side of the I party/Workman and upon hearing the arguments advanced by the learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Southern Railway, Madras in terminating the services of Shri P. Kulasekaran from 21-12-1976 in violation of Section 25F of I.D. Act, 1947 is just, proper and legal? If not to what relief is the workman entitled?”

2. The Industrial Dispute as stated in the Claim Statement of the I Party/Workman is briefly as follows :—

The I Party/Workman Sri P. Kulasekaran (hereinafter referred to as petitioner) was engaged as casual labourer under the control of Inspector of Works, Tambaram, Madras on 4-11-1975. He was a daily rated casual labour and was engaged only on read basis. Since his service was found unsatisfactory he was stopped from service from 21-12-1976. The petitioner has not been conferred temporary status. The Petitioner was not issued with the notice of retrenchment or paid notice pay. He was not paid retrenchment compensation under section 25F of the Industrial Dispute Act. As it is a contravention of section 25N of the Industrial Dispute Act, the retrenchment itself is ab initio void. The Petitioner filed a suit O.S. No.86/1977 in the City Civil Court, Madras challenging his retrenchment as illegal and void. It was a suit for declaration that his retrenchment from service was illegal, void ab initio and to reinstate him in service with all benefits. The Industrial Disputes Act has been made applicable to the workers of Railway by virtue of 149(6) of the Indian Railway Establishment Code and the Railway Establishment Manual. Since the service rules were violated, the Petitioner filed a suit. The learned Sub-Judge passed an order that though there was a violation of section 25F of I.D. Act and it was illegal, the Petitioner should have raised an industrial dispute. Against that judgement and decree, the Petitioner filed an appeal as AS 297/82. The 5th Additional Judge, City Civil Court, Madras gave a finding in that appeal that it was a case of illegal retrenchment from service, which is in contravention of Section 25F of the I.D. Act, 1947. But however, dismissed that appeal with an observation that ‘the Petitioner should seek remedy only by way of raising an industrial dispute’. Then the Petitioner raised an industrial dispute under section 2A of the Industrial Disputes Act, 1947. The Central Govt. had referred the matter for adjudication to the Industrial Tribunal, Bangalore. Then as per the orders of the Govt. the case has been transferred to Madras Industrial Tribunal. The Petitioner had worked for more than 240 days. No notice of retrenchment, wages

or retrenchment compensation had been offered or paid. Hence, the retrenchment of the Petitioner from service is unjust, improper and illegal. Hence, the Petitioner is deemed to be continued in service with all benefits. There is no severance of relationship of master and servant in eyes of law. His juniors like Ponnusamy, Mani, Arasappan and Elumalai had been made permanent employees and drawing a salary of Rs. 4000 per month. The Petitioner was drawing a salary of Rs. 234 per month, when he was retrenched from service. Hence, this Tribunal may be pleased to order the Respondent/Management to reinstate the Petitioner in service with back wages, continuity of service and other attendant benefits.

3. The Respondent/Management, Southern Railway, Chennai had filed a Counter disputing the averments in the Claim Statement. They are briefly as follows :—

The Petitioner Sri P. Kulasekaran was engaged as casual labour under the control of Inspector of Works, Tambaram on 4-11-75 only and not on 21-10-75. The Petitioner was not continuously engaged. He has been stopped several times and was re-engaged as and when extra casual labourer was required by the administration. As the Petitioner's work was found to be unsatisfactory by the Supervisor, the Inspector of Works, Tambaram, the Petitioner was stopped from service with effect from 21-12-1976. Stopping the Petitioner from service does not attract section 25F of the Industrial Disputes Act, 1947, since the Petitioner was engaged only as a daily rated casual labourer, who had not put in 240 days of continuous service. In fact, he had only rendered 267 days of total service, which was not continuous and which was besides not in a particular calendar year. In the suit filed by the Petitioner in the City Civil Court, the Hon'ble Court observed that the filing was illegal and bad in law and dismissed the suit and the appeal also. The Appellate Court gave a direction to raise an industrial dispute in the appropriate forum. The Petitioner aggrieved by that decision, filed a second appeal before the High Court. The High Court was also pleased to dismiss the appeal duly directing the Petitioner to seek his remedy under Industrial Disputes Act, 1947. The City Civil Court has not observed that the retrenchment is illegal. As the dispute raised by the Petitioner before the Assistant Labour Commissioner, Chennai ended in failure of conciliation, on submission of the report by Assistant Labour Commissioner, Chennai, the matter has been referred by the Govt. to this Tribunal for adjudication. The Petitioner was stopped from service because he was engaged as daily rated casual labourer. Since the Petitioner had not obtained temporary status, the Petitioner's averment that he was retrenched from service was denied. At

no point of time, the relationship of master and servant in the eyes of law was exist between the Petitioner and the Respondent/Management. The Petitioner has no locus standi to compare the services of erstwhile juniors, who attained temporary status and absorbed permanently for the reason they had put in the required number of days of continuous service. The Petitioner was stopped from service due to his unsatisfactory performance, this does not amount to illegal retrenchment. He is not entitled to seek remedy under Industrial Disputes Act, 1947. Hence, this Hon'ble Tribunal may be pleased to dismiss this industrial dispute by rejecting the claim made by the Petitioner.

4. The point for my consideration is—

“Whether the action of the Management of Southern Railway, Madras in terminating the services of Shri P. Kulasekaran from 21-12-1976 in violation of Section 25F of I.D. Act, 1947 is just, proper and legal? If not to what relief is the workman entitled?”

Point

It is admitted that the I Party Workman Sri P. Kulasekaran, the Petitioner herein was engaged as a casual labour under the Inspector of Works, Tambaram in the year 1975 and he was non-employed on 21-12-1976. When the matter was taken up for enquiry, when it was pending before the Tamil Nadu Industrial Tribunal, the Petitioner/Workman was examined himself as WW1. It is his evidence that he entered in service of the Respondent/Management as a Mason on 21-10-1975. He was given monthly salary of Rs 250/- at the daily wage rate basis of Rs. 8/-. He has not filed any document in support of his stand. It is his further evidence that he was removed from service on 21-12-76, when he was last working in Tambaram IOW. Ex.W1 is the xerox copy of a certified copy of the judgement in O.S. No. 8601/1977 from the file of City Civil Court, Madras. It is decided by the Court in that Judgement that “Civil Court has no jurisdiction to try the same and from the facts it is clear that the plaintiff was stopped from service only on account of unsatisfactory work and the stoppage will not amount to retrenchment and the plaintiff is not entitled to the relief of declaration.” Ex.W2 is the typed copy of the judgement passed by the 5th Additional Judge, in A.S.No. 297/1992. That appeal was dismissed confirming the judgement of the City Civil Court under Ex.W1 Ex W3 is the typed copy of the judgement by the High Court in 2nd appeal No. 1358/1986. The High Court has confirmed the decisions of both the Courts below in holding that the Civil Court has no jurisdiction to try this case as an industrial dispute. In the cross examination WW1 has stated that he does

not know for what reason he was removed from service. He has denied the suggestion that he has not worked continuously for the period of 240 days in a calendar year and he was employed only as labourer on daily wages. Though he has denied such suggestions put by the learned counsel in the cross examination, he has not filed any documentary evidence in support of this contention. It is specifically contended by the Respondent/Management that the Petitioner had not put in 240 days in a calendar year to grant a temporary status and hence the Petitioner is not right in claiming retrenchment compensation comparing with others who have worked for 240 days in a calendar year and obtained consequential benefits. The contention of the Respondent/Management that the disengagement of the Petitioner from service is due to his unsatisfactory performance is not disputed as incorrect. Under such circumstances, on the basis of materials available in this case, and on the basis of admission of WW1 in his evidence, it is seen that the Petitioner was employed by the Respondent Management on daily wage basis casual labourer and he was disengaged from service by the Respondent/Management due to his unsatisfactory performance in service. In view of this aspect, it can be held that there was no violation of section 25F/25N of the Industrial Disputes Act, 1947 as alleged by the Petitioner. Since it is not proved by the Petitioner that he had worked for a continuous period of 240 days in a calendar year, he is not entitled to claim compensation for the Respondent disengaging him from service. The contention of Respondent/Management that the Petitioner was stopped from service on account of his unsatisfactory work even before he had attained temporary status has not been disputed by substantial or acceptable evidence by the Petitioner. So, there is no question of termination of service of the Petitioner by the Respondent/Management and hence the claim of the Petitioner that he was terminated from service contrary to the provisions of the Industrial Disputes Act is not sustainable. Further, it cannot be said that it is contrary to Rule 149(6) of Indian Railway Establishment Code. In view of the above, it can be concluded that the Petitioner's claim for reinstatement in service with back wages and continuity of service with other attendant benefits cannot be granted. So, under such circumstances, it can be concluded that the action of the Management of Southern Railway, Madras in stopping the Petitioner/Workman from service from 21-12-1976 (which is not termination of service) is not in violation of section 25F of the Industrial Disputes Act, 1947. Hence, such action of the Management against the I Party / Workman is just, proper and legal and the petitioner/ Workman is not entitled to any relief. Thus, I answer the point accordingly.

5. In the result, an award is passed holding that the action of the Management of Southern Railway, Madras in stopping the Petitioner Workman Sri P. Kulasekaran from service on 21-12-1976, which is not a termination of service to attract the provision of Section 25F of the Industrial Disputes Act, is just, proper and legal. The concerned workman is not entitled to any relief, No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th July, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:

For the I Party/Workman

WW1—Shri P. Kulasekaran.

For the II Party/Management: None.

Documents Marked:

For I Party/Workman:

Ex. No. Description

Ex. W1 15-3-80—Xerox copy of judgement in O.S. No. 8601 of 1977.

Ex. W2 4-2-83—Xerox copy of order in A.S. No. 297 of 1982.

Ex. W3 23-8-90—Xerox copy of the order in S.A. No. 1358 of 1986.

For the II Party/Management: Nil.

नई दिल्ली, 31 जुलाई, 2001

का. घा. 2172—औद्योगिक विवाद अधिनियम, 1947. (1947 का. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साक्ष्य सेन्द्र रेलवे के प्रबन्धन के संयुक्त नियोजकों और उनके कार्यकारी के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अथवा न्यायमूर्ति बंगलूर-1 के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एल-41012/151/89-आई.आर. (डी यू)/(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2172.—In pursuance of Section 17 of the Industrial Dispute Act, 1947. (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Central Railway and their workman, which was received by the Central Government on 30-7-2001

[No. L-41012/151/89-IR(DU)/(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT "SHRAM SADAN", G. G. PALYA, TUMKUR ROAD, YESHWANTPUR, BANGALORE-560022

Dated, the 5th July, 2001

2497 GI/2001—13

PRESENT:

Hon'ble V. N. Kulkarni, Presiding Officer

C.R. No. 43/90

I Party

Shri V. B. Irakal,
Malagi Gurusiddappa Chowk,
Ghantikeri Oil,
Hubli-560020.

II Party

The Divisional Railway Manager,
Hubli-580020.

APPEARANCES:

I Party: M. Ram, Rao, General Secretary

II Party: M. V. Sheelyant, Advocate

AWARD.

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-41012/151/89-IR(DU) dated 25-07-90 for adjudication on the following schedule.

SCHEDULE

"Whether the action of management of South Central Railway, Hubli in terminating the services of Shri V. B. Irakal, Khalasi is justified? If not, what relief the workman concerned is entitled to?"

2. I party was working with the II party. Enquiry was held and he was terminated, therefore this industrial dispute is raised.

3. The case of the I party in brief is as follows:

4. The I party was ex-employee of the southern railway and he served the management sincerely. Charge sheet was issued. Enquiry was conducted but the same was not proper and it was in violation of principles of natural justice. The punishment of termination is not correct. I party for these reasons has prayed to pass award in his favour.

5. The case of the management in brief is as follows:

6. It is the case of the management that the I party was removed from service on 18-10-79 for his unauthorised absence. On representation he was appointed as temporary electrical Khalasi from 18-1-90. He remained again absent for about 138 days in 1980 and also absent in 1981 without prior permission or proper medical certificate. There was no improvement in his attendance. Charge sheet was issued and enquiry was held.

7. So far as enquiry is concerned the same is correct and the enquiry is properly held by giving full opportunity to the I party and the finding is correct. The order of the management is proper and legal. Management for these reasons has prayed to reject the reference.

8. It is seen from the records that the I party by filing memo conceded the validity of Domestic Enquiry and there after the case was posted for arguments. I have heard oral arguments of both sides. I party has filed written arguments.

9. In this case the I party has conceded the fairness of the Domestic Enquiry. Having conceded the Domestic Enquiry there is no merit in the arguments of the I party that the enquiry is not proper and valid. Once it is held that the Domestic Enquiry is fair and proper this court has little discretion to consider the said arguments and therefore I am of the opinion that there is no merit in the said contention.

10. It is seen from the records, that, according to the management the charge is that the workman was absent for a long period. I have considered the submissions made by both sides. It is seen from the records that the allegations against the I party are that I party remained absent for a long time. In my considered view the punishment of termination is too harsh. In my opinion if the I party was an permanent employee he could be reinstated without back wages from the date of termination.

11. Accordingly, I pass the following order.

ORDER

Reference is partly allowed and the management is directed to take him as Khalasi if he was a permanent khalasi from the date of his termination, with continuity of service as per rules, if the vacancy was available then. In the given circumstances back wages are not given.

(Dictated to the LDC, transcribed by him, corrected and signed by me on 5th July 2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 26 जुलाई, 2001

का. आ. 2173.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण नासिक के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/102/96-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 26th July, 2001

S.O. 2173.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/Nasik as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 26-7-2001.

[No. L-12012/102/96-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE SHRI S. S. HIRURKAR, INDUSTRIAL TRIBUNAL AT NASIK

Reference (IT) No. 4/1998

BETWEEN

Bank of Baroda,
Deolali Branch,
Nasik

.. 1st Party

AND

Shri Purushottam Vasant Bhagwat,
C/o Nirmal Narayan Lavate,
2158, Sonwar Peth,
Nasik-I.

.. Second Party

CORAM :

Shri S. S. Hirurkar Industrial Tribunal.

APPEARANCES :

Shri C. A. Dcolalkar Advocate for First Party.

Shri S. G. Derhpande, Advocate for Second Party.

(Award Dictated in the Open Court on 11-6-2001)

This reference was adjudicated to this Tribunal by the Government of India, Ministry of Labour, New Delhi-110001 by order dt. 9-6-98 regarding the Industrial Dispute between Bank of Baroda, Deolali Branch, Nasik and Shri P. V. Bhagwat and this Tribunal was directed to decide whether the action of the Management of Bank of Baroda regarding the terminating

the services of Shri P. V. Bhagwat w.e.f. 7-5-93 was legal and justified, and if not to what relief the said workman is entitled to.

2. After receipt of the reference, notices were issued to both the parties. Accordingly the Second Party workman has filed his statement of claim below Ex. U-1 alongwith certain documents.

3. Thereafter the First Party Management has filed its W.S. Below Ex. C-2 alongwith certain documents. Thereafter both the parties were directed to lead oral evidence if any. The matter was adjourned from time to time for evidence of the Second party. Since from long time nobody remained present for the Second Party Workman. Even the Second Party workman has not given a list of witnesses. No evidence was adduced for the Second Party workman.

4. Today when the matter was called repeatedly from 11.00 a.m. to 4.30 p.m. nobody remained present for the Second Party workman.

5. The Counsel for the First Party Management remained present and insisted that since nobody remaining present for the Second Party workman from long time the reference be dismissed for want of prosecution.

Accordingly the reference stand dismissed for want of prosecution.

6. Award accordingly.

Sd/-

S. S. HIRURKAR, Industrial Tribunal

Place : Nashik

Date : 11-6-2001

नई दिल्ली, 26 जुलाई, 2001

का. आ. 2174.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इश्योरेन्स कं. लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, उदयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2001 को प्राप्त हुआ था।

[सं. एल-17012/36/96-आई आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 26th July, 2001

S.O. 2174.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/Labour Court, Udaipur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of National Insurance Co. Ltd. and their workman, which was received by the Central Government on 26-7-2001.

[No. L-17012/36/96-IR(B-II)]

C. GANGADHARAN, Under Secy

अनुबंध

न्यायालय : न्यायाधीश, औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

पीठासीन अधिकारी : श्री पी एन खण्डेलवाल, आर एच जे एस औद्योगिक विवाद संख्या 10/97

नारायणसिंह पुत्र रघुनाथसिंह राठीड़, निवासी फौजीबन्दी हाऊस, श्रीनाथ मार्ग, उदयपुर

बनाम

प्रबंधक, नेशनल इन्श्योरेंस कम्पनी लि, 6 बापू बाजार,
उदयपुर
उपस्थित :—

श्री सुभाष श्रीमाषी : प्रार्थी की ओर से
श्री पी आर पीरवाल : विपक्षी की ओर से

दिनांक 6-7-2001

पंचाट

भारत सरकार के श्रम विभाग द्वारा जरिये पत्र क्रमांक एल-17012/3696/आई आर (बी-II) दि. 18-8-97 द्वारा निम्न आशय का प्रसंग इस न्यायालय को प्रेषित किया गया।

“बया डिवीजमल मैनेजर, नेशनल इन्श्योरेंस कम्पनी उदयपुर द्वारा नारायणसिंह को सेवा से पृथक किया जाना उचित एवं वैध है? यदि नहीं तो श्रमिक किस राहत व राशि को पाने का अधिकारी है?”

उक्त आशय का प्रसंग प्राप्त होने पर न्यायालय द्वारा, दिनांक 18-9-97 को दर्ज रजि. किया जाकर पक्षकारान को नोटिस जारी किये गये। जिस पर प्रार्थी की ओर से क्लेम व विपक्षी की ओर से जवाब पेश किया गया।

प्रार्थी द्वारा आवेदन में उल्लिखित तथ्यों के अनुसार प्रार्थी की नियुक्ति विपक्षी के नियोजन में दि. 20-6-80 को च.श्रे.कर्म. के रूप में हुई। उसने विपक्षी को सदैव सेवा संतोषप्रद प्रदान की है उस पर कभी कदाचरण का आरोप नहीं रहा। उसने पूर्ण निष्ठा व ईमानदारी से कार्य किया। प्रार्थी को विपक्षी ने दि. 6-1-82 को बिना पूर्व सूचना दिये, बिना अनुशासनात्मक कार्यवाही किये, बिना क्षतिपूर्ति दिये सेवा से पृथक कर दिया जो ओ.वि. अधि. की धारा 25 एफ के विरुद्ध होने से सेवा मुक्ति अवैध व शून्य है। प्रार्थी ने विपक्षी के नियोजन में 240 दिन से भी अधिक अपनी सेवाएं प्रदान की हैं। प्रार्थी ने पुनः सेवा में लेने के लिये आग्रह किया तो उसे आश्वासन देते रहे और आश्वासन के तहत ड्यूटी प्रमाणपत्र, चरित्र प्रमाण पत्र, टी सी, अंक तालिका मांगने पर उसने विपक्षी को दी। विपक्षी के नियोजन में प्रार्थी के बाद वाले श्रमिक कार्य कर रहे हैं। इसलिये फर्स्ट कम लास्ट गो वाले सिद्धांत के आधार पर प्रार्थी को सेवा में लिया जाना चाहिये। अतः प्रार्थी की अवैध सेवा मुक्ति के कारण विपक्षी के नियोजन में पुनः लिया जाए।

विपक्षी ने अपने प्रत्युत्तर में यह उल्लिखित किया है कि प्रार्थी ने अपने क्लेम में यह कथन किया है कि उसे विपक्षी द्वारा दि. 6-1-82 को बिना पूर्व सूचना दिये, बिना अनुशासनात्मक कार्यवाही किये एवं बिना क्षतिपूर्ति प्रदान किये सेवा से पृथक कर दिया जबकि इस बाबत प्रार्थी ने दि. 12-6-90 को जो पत्र विपक्षी को लिखा उसमें कही पर भी यह आरोप नहीं लगाया है कि प्रार्थी विपक्षी के नियोजन में था। प्रार्थी ने दि. 12-6-90 को

जो पत्र विपक्षी के क्षेत्रीय कार्यालय जयपुर को लिखा उसमें अपनी सेवायें नियमित किये जाने हेतु निवेदन किया व यह भी कहा गया कि प्रार्थी ने दि. 2-7-80 से 9-9-81 तक कार्य किया था मगर पूरे पत्र में किसी भी स्थान पर जो तथ्य क्लेम में अंकित किये हैं उसके बाबत एक अक्षर भी नहीं लिखा। प्रार्थी के विपक्षी द्वारा केवल विपक्षी कार्यालय में कार्यरत कर्मचारी/अधिकारी के पीने के पानी को भरने के लिये दि. 26-6-80 को आकस्मिक तौर पर 6 रु. प्रतिदिन के हिसाब से अस्थाई रूप से दैनिक मजदूरी पर अंशकालीन रूप से रखा गया था। विपक्षी एवं प्रार्थी के मध्य नियोजक व कर्मकार का कोई संबंध नहीं था। प्रार्थी जितने दिन आता उसका एक विवरण बना कर प्रार्थी विपक्षी को देता उसके अनुसार विपक्षी प्रार्थी को मजदूरी का भुगतान कर देता था। प्रार्थी ने स्वतः ही दि. 6-1-82 से पानी भरने का अस्थाई व अंशकालीन कार्य बंद कर दिया क्योंकि उसके पश्चात् विपक्षी को इस कार्य के लिये किसी भी व्यक्ति की आवश्यकता नहीं थी न किसी व्यक्ति को इस कार्य के लिये उसके बाद लगाया गया। समझौता अधिकारी के समक्ष प्रार्थी ने जो प्रार्थना पत्र प्रस्तुत किया है उसमें दि. 10-12-81 को सेवा से पृथक करना लिखा है जबकि न्यायालय में जो क्लेम प्रस्तुत किया है उसमें दि. 6-1-82 को सेवा से पृथक करना बताया है। इसी प्रकार प्रार्थी ने पुनः समझौता अधिकारी के समक्ष एक प्रार्थना पत्र में दि. 5-1-82 को सेवा से पृथक करना बताया है। उपरोक्त वर्णित तथाकथित सेवा मुक्ति के विरोधाभासी तथ्य यह प्रमाणित करते हैं कि प्रार्थी कभी भी विपक्षी की सेवा में नहीं था। इस प्रकार प्रार्थी की विपक्षी के नियोजन में किसी प्रकार से सेवा समाप्ति अवैध व शून्य नहीं है। क्लेम में गलत तथ्य व आधारहीन होने से स्वीकार योग्य नहीं है। अतः प्रार्थनापत्र खारिज किया जाए व प्रार्थी से विपक्षी को विशेष हर्जा खर्चा दिनाया जावे।

प्रार्थी की ओर से स्वयं का शपथ पत्र प्रस्तुत किया गया। दस्तावेजी साक्ष्य में प्रदर्श 1 दि. 12-6-90 का क्षेत्रीय प्रबंधक नेशनल इन्श्योरेंस कम्पनी जयपुर, क्षेत्रीय कार्यालय जयपुर को प्रेषित पत्र प्रदर्श 2, 3, समझौता अधिकारी के समक्ष प्रस्तुत किये गये आवेदन की टाईप की प्रति पेश की गई। प्रार्थी के संबंध में इश्योरेंस कम्पनी में हुए पत्राचार की फोटो प्रति पेश की गई। विपक्षी की ओर से एम. के खुराना सहायक मण्डलीय प्रबंधक नेशनल इश्योरेंस कम्पनी लि. उदयपुर का शपथ पत्र प्रस्तुत किया गया।

न्यायालय द्वारा सम्पूर्ण तथ्यों का अवलोकन किया जाकर दोनों पक्षों के प्रतिनिधिगण की बहस सुनी गई। जिसमें लगभग उन्हीं तथ्यों का विस्तार के साथ उल्लेख किया गया जिनका उल्लेख क्लेम व जवाब में किया गया है।

विपक्षी की ओर से बहस के दौरान यह तर्क प्रस्तुत किया गया कि किसी भी दस्तावेजी साक्ष्य से प्रमाणित नहीं है कि प्रार्थी ने विपक्षी के कार्यालय में 240 दिन तक कार्य किया हो। प्रार्थी ने समय-समय पर जो आवेदन विभिन्न

स्थाओं पर दिया है, मैं उसके द्वारा विपक्षी के अधीन रहा नियोजन की अवधि को लेकर भिन्नता है। प्रार्थी केवल अशकालीन कार्य पर दैनिक मजदूरी 6 रु. प्रतिदिन पर पानी भरने के लिए लगाया गया था। ऐसी स्थिति में उसे किसी प्रकार से नोटिस के द्वारा उसकी सेवा समाप्त करने की आवश्यकता नहीं है।

सभी परिस्थितियों पर विचार करने के उपरान्त यह देखना है कि इस प्रकरण में किस आशय का एवार्ड पारित किया जाना चाहिये।

प्रार्थी द्वारा अपने शपथ-पत्र में लगभग उन्ही तथ्यों का उल्लेख किया गया है जैसा कि प्रार्थी का अपने स्टेटमेंट ऑफ केस में कथन रहा है। प्रतिपरीक्षण में प्रार्थी का कथन है कि दि. 12-6-90 को उसने कम्पनी में एक आवेदन किया था जो प्रदर्श 1 है जिस पर ए से बी हस्ताक्षर उसके हैं। यह सही है कि वह बापू बाजार कार्यालय में पानी भरने का काम करता था जो प्रातः 9 बजे से शाम पांच बजे तक पानी भरता था। उस समय इस ऑफिस में कुल 20-22 आधमी काम करते थे। उसको प्रतिस्प्ताह या दस दिन में बाउचर से सात रुपये प्रतिदिन का भुगतान करते थे। उसने दि. 6-1-82 तक काम किया था। वह अभी उदिवापोल एस टी डी बूय पर साल ठेक साल से काम कर रहा है जहाँ 1500 रु. महीने देते हैं। विपक्षी द्वारा पेश किये गये अपने शपथपत्र में अपने द्वारा दिये गये प्रत्युत्तर के तथ्यों की पुनरावृत्ति करते हुए प्रतिपरीक्षण में यह कथन रहा है कि हाजरी रजि. रखा जाता है परन्तु प्रार्थी का नाम रजि. में नहीं लिखा जाता था क्योंकि अशकालीन पानी भरने के लिये रखा था। दि. 20-6-80 से 6-1-82 तक प्रार्थी ने काम किया परन्तु लगातार काम नहीं किया। प्रार्थी स्वयं विवरण बना कर देता था उसके अनुसार भुगतान कर देते थे। प्रार्थी को 6 रु. प्रतिदिन आंशिक काम पर रखा था। सन् 1980 का रिकार्ड है जो उपलब्ध नहीं हो रहा है क्योंकि पांच साल बाद आडिट होने पर नष्ट कर दिये हैं। प्रदर्श ए-1 लगायत ए 7 हमें प्राप्त हुए थे। प्रदर्श ए-1 से ए 5 हमारी कम्पनी के हैं। भुगतान बाउचर बना कर बैंक से करते थे कभी नकद दिया हो तो पता नहीं। प्रार्थी को कभी किसी तरह का कोई नोटिस नहीं दिया गया था।

प्रार्थी ने अपने आवेदन पत्र में यह उल्लिखित किया है कि साक्षी उसकी नियुक्ति विपक्षी के नियोजन में दि. 20-6-80 को च. श्रे. कर्म के रूप में हुई थी और इसी तथ्य को उसने अपने शपथ-पत्र में पेश किया है लेकिन अभिलेख पर ऐसी कोई दस्तावेजी साक्ष्य उपलब्ध नहीं है। जिसमें यह निष्कर्ष निकाला जा सके कि प्रार्थी की विपक्षी के नियोजन में च. श्रे. कर्म के रूप में नियुक्ति हुई हो। इसके विपरीत जो साक्ष्य प्रार्थी नारायण सिंह स्वयं की अपने प्रतिपरीक्षण में प्रार्थी है उससे यह स्पष्ट है कि उसे बापू बाजार में विपक्षी के कार्यालय में पानी भरने के काम पर रखा गया था। विपक्षी ने भी अपने प्रत्युत्तर में यही कथन किया है कि प्रार्थी

को अशकालिक श्रमिक के रूप में दैनिक मजदूरी पर 6 रु. प्रतिदिन के हिसाब से विपक्षी के कार्यालय में पानी भरने के लिये आकस्मिक रूप से रखा गया था। इसका कोई नियमित नियोजन विपक्षी के कार्यालय में नहीं था। जिसने दिन प्रार्थी ने दैनिक मजदूरी पर अशकालिक श्रमिक के रूप में दि. 20-6-80 को उसे मजदूरी का भुगतान कर दिया। विपक्षी का यह कथन युक्तियुक्त है कि प्रार्थी ने जो आवेदन समय समय पर विपक्षी के क्षेत्रीय कार्यालय में व समझौता अधिकारी के समक्ष पेश किये हैं उन आवेदनों में प्रार्थी ने विपक्षी कम्पनी में अशकालीन कार्य शुरू करने की तिथि व उसे सेवा से हटाने की तिथि के संबंध में कुछ अंतर्विरोधी तथ्य लिखे हैं लेकिन उससे यह निष्कर्ष नहीं निकाला जा सकता कि प्रार्थी विपक्षी कम्पनी के अधीन दैनिक मजदूरी पर अशकालीन कार्य के लिये नियोजन में नहीं रहा हो। इसी प्रकार प्रार्थी पक्ष ने विपक्षी कम्पनी के द्वारा उसके संबंध में किये गये पत्राचार की फोटो प्रतियां प्रदर्श 1 लगायत 7 जो अभिलेख पर प्रस्तुत की है उन आशकालिक पत्राचार से प्रार्थी को नियोजन का कोई अधिकार उत्पन्न नहीं होता है। यह केवल मात्र ऐसा पत्राचार है जो प्रार्थी के द्वारा विपक्षी कम्पनी क्षेत्रीय प्रबंधक को भेजा गया। प्रार्थी के आवेदन के परिणामस्वरूप उसकी कार्यस्थल प्रणाली में किया गया पत्राचार है जिससे प्रार्थी को विपक्षी कम्पनी में नियोजन का कोई अधिकार उत्पन्न नहीं होता है।

जहाँ तक विपक्षी का यह कथन है कि प्रार्थी ने यह प्रार्थना-पत्र लम्बी अवधि के पश्चात् क्षतिपूर्ति प्राप्त करने के लिये पेश किया है इसलिये चलने योग्य नहीं है। विपक्षी का यह कथन विधि विनिश्चय 1999 II एल एल जे 482 महावीर सिंह बनाम यू पी स्टेट इलेक्ट्रिक सिटी बोर्ड व अन्य में प्रतिपादित विधि सिद्धांत के परिप्रेक्ष्य में स्वीकार किये जाने योग्य नहीं है और इस आधार पर रिकॉर्ड को निरस्त नहीं किया जा सकता। इसी प्रकार प्रार्थी पक्ष ने जो विधि विनिश्चय आर. एल. आर. 1989 / 156 बगवंत सिंह यादव बनाम स्टेट आफ राजस्थान पेश किया है। इस विधि विनिश्चय सिद्धांत से हम सम्मान सहमत हैं। उक्त विधि विनिश्चय में प्रतिपादित सिद्धांत के अनुसार श्री वि. अधि. की धारा 25 एफ का लाभ अशकालीन कर्मचारी पाने का अधिकार है। उक्त विधि विनिश्चय प्रस्तुत प्रकरण में काफी दिशा में निर्देश प्रदान करते हैं। प्रार्थी ने तथाकथित सेवामुक्ति की अवधि से पूर्व एक वर्ष की अवधि में 240 दिन या 240 से अधिक काम किया है। यह तथ्य विपक्षी के साक्षी एम के सुराना के प्रतिपरीक्षण से प्रमाणित होता है और इस प्रकार प्रार्थी श्री. वि. अधि. की धारा 25 बी (2) के तहत सेवा में निरंतरता की शर्त पूरी करता है और प्रार्थी की सेवा समाप्ति से पूर्व श्री. वि. अधि. की धारा 25 एफ के प्रावधानों की पालना किया जाना अनिवार्य है जो प्रस्तुत प्रकरण में पेश/शुदा अभिलेख से की जाना नहीं पाई जाती है। इस कारण प्रार्थी की सेवा समाप्ति उचित व वैध नहीं है।

चूंकि प्रार्थी विपक्षी के अधीन अशकालीन दैनिक वेतन भोगी कर्मचारी था 20-6-80 से जिसका नियोजन विपक्षी के अधीन 240 दिन तक रहा है हाना कि उसकी उपस्थिति अनियमित

रही है अतः यदि प्रार्थी को वैकल्पिक रूप से सेवा में पुनर्स्थापित किया जाता है तो इसके नियोजन की प्रकृति अंश-कालीन दैनिक वेतन भोगी श्रमिक के रूप में बनी रहेगी। ऐसी स्थिति में प्रार्थी को पुनः सेवा में पुनर्स्थापित किया जाना आवश्यक प्रतीत नहीं होता है। प्रस्तुत प्रकरण के संक्षेप व परिस्थितियों को देखते हुए सेवा में पुनर्स्थापित करने अतिरिक्त भिन्न अनुत्तीर्ण प्रदान किया जाना तुलनात्मक रूप से पक्षकारों के हित में उचित व अपेक्षित है।

चूंकि विपक्षी द्वारा धारा 25 एफ.ओ.वि. अधि. के प्रावधानों की पालना नहीं की गई है। प्रार्थी ने विपक्षी नियोजन में लगभग एक वर्ष से अधिक समय तक अंशकालीन-दैनिक वेतनभोगी कर्मचारी के रूप में कार्य किया है। अतः उसका उचित सेवा लाभ व इस अवधि के मिलने वाले सेवा का लाभ व एक माह के नोटिस वेतन का लाभ देय होता है। प्रार्थी का रिकॉर्ड से अब तक का नियोजन निरंतर माना जाये तो सेवा काल के आधार पर दो माह का वेतन क्षतिपूर्ति रूप में देय होता है जो वर्तमान में प्रचलित दर के अनुसार 8840 रु. होता है। इस प्रकार समस्त तथ्यों को देखते हुए प्रार्थी को 7000 रु. एक अग्रत क्षतिपूर्ति के रूप में दिलाया जाना न्यायोचित प्रतीत होता है। तदनुसार यह विवाद अधि-निर्णित किया जाता है।

अतः डिब्रीजन्स मैनेजर नेशनल इन्श्योरेंस कम्पनी लिमिटेड द्वारा प्रार्थी नारायणसिंह जी सेवा से पृथक् किया जाना उचित व अवैध नहीं है। इस अवैधानिक सेवा समाप्ति के परिणामस्वरूप प्रार्थी अपने उपरोक्त नियोजक से क्षतिपूर्ति के 7000 रु. प्राप्त करने का अधिकारी है। यह राशि अब हो जाने पर नियोजक में श्रमिक के प्रति अधि. के अन्तर्गत सारे दायित्व समाप्त हो जायेंगे। राशि प्रकाशन की तिथि से तीन माह में अदा कर दी जाये अन्यथा इस राशि पर 12 प्रतिशत वार्षिक की दर से ध्याय भी देय होगा। अंशकालीन प्रकाश-नार्थ राज्य सरकार को भेजा जाए।

पंचाट आज दिनांक 6-7-2001 को खुले न्यायालय में सिखाया जाकर सुनाया गया।

पी.एन. खण्डेलवाल, न्यायाधीश

नई दिल्ली, 30 जुलाई, 2001

का. प्रा. 2175—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारियों के बीच अग्रबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कामपुर के पंचाट को अग्रणीत करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

रू—

[सं. एल-12012/27/99-आई. धार. (बी-II)]

सी. गंगाधरण, अव्वर सचिव

New Delhi, the 30th July, 2001

S.O. 2175.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Kanpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 30-7-2001.

[No. L-12012/27/99-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE SHRI R. P. PANDEY, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR DAYA NAGAR, KANPUR

Industrial Dispute No. 140 of 1999

Punjab National Bank Employees' Union.
The President PNBEC,
13-A Keshav Kunj,
Pratap Nagar,
Agra.

AND

Punjab National Bank,
Regional Manager,
Punjab National Bank,
Regional Office,
Vibhav Nagar,
Agra.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-12012/27/99-IR(B-II) dated 7/11-6-99 has referred the following dispute for adjudication to this tribunal—

"Whether the action of the Regional Manager Punjab National Bank in not providing employment to Sri Anil Kumar Chouhan S/o late Sri Babar Singh Chouhan, ex-employee is legal and justified? If not to what relief the workman is entitled to?"

2. In this case despite availing of several opportunities the Union representing the case on behalf of the concerned workman did not file statement of claim though the authorised representative for the union appeared in the case on various dates fixed in the case. Ultimately when the case was taken up for hearing on 16-7-2000 at camp Lucknow, instead of filing statement of claim on behalf of the union, the representative for the workman made an endorsement on the order sheet to the effect that the claim on behalf of the concerned workman is not pressed. In view of above, the Tribunal is left with no other option but to hold that the concerned workman is not entitled to any relief in pursuance of the present reference for want of pleading and proof.

3. Reference is decided against the workman accordingly

24-7-2001

R. P. PANDEY, Presiding Officer

नई दिल्ली, 30 जुलाई, 2001

का. प्रा. 2176—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारियों के बीच अग्रबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कामपुर के पंचाट को अग्रणीत करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/384/97-आई धार (बी-II)]

सी. गंगाधरण, अव्वर सचिव

New Delhi, the 30th July, 2001

S.O. 2176.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Kanpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 30-7-2001.

[No. L-12012/384/97-IR(B-II)]
C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE SRI R. P. PANDEY, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SARVODAYA NAGAR,
KANPUR

Industrial Dispute No. 175 of 1998

In the matter of dispute :

BETWEEN

Punjab National Bank Employees Union,
State Vice President PNBEU,
Pram Dham Vishnu Dham Colony,
New Madav Nagar,
Saharanpur.

AND

Punjab National Bank,
The Regional Manager,
PNB Regional Office,
Arya Nagar Chowk,
Hardwar.

AWARD

1. Central Government, Ministry of Labour, vide its Notification No. L-12012/384/97-IR(B-II) dated 20-10-98 has referred the following dispute for adjudication to this tribunal—

“Whether the action of the management of Punjab National Bank in not paying special allowance from 8-3-96 to 8-3-97 and halting allowance and T.A. & D.A. from 15-5-94 to 10-11-95 to Sh. V. K. Gupta is legal and justified? If not, to what relief the said workman is entitled?”

2. In the present case after exchange of pleadings between the parties after the filing of the documents by the parties the case was taken up for evidence of the workman on several dates but on each date the case was adjourned on one reason or the other on the request of the representative for the workman/union as the workman did not present himself for his evidence before the tribunal when the case was taken up for hearing. Ultimately the case was taken up for evidence of the workman at camp Lucknow on 16-7-2000 when the representative for both the sides were present. Again the concerned workman absented and did not turn up on 16-7-2000 when the case was taken up for hearing. The authorized representative for the workman made an endorsement on the order sheet dated 16-7-2000 that the claim is not pressed.

3. In view of it and having regard to the conduct of the concerned workman the tribunal is now left with no other option but to hold that the concerned workman is not interested in contesting the present dispute.

4. In view of above discussions, I have no hesitation in holding that the concerned workman is not entitled for any relief in pursuance of the present reference order for want of proof. Accordingly the reference is decided against the workman and in favour of the management.

R. P. PANDEY, Presiding Officer

नई दिल्ली, 30 जुलाई, 2001

का. आ. 2177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धर्म व्याया-लय-II, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/207/94-आईआर (बी-II)]

सी. गंगाधरण, अध्वर सचिव

New Delhi, the 30th July, 2001

S.O. 2177.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court-II, Dhanbad as shown in the annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 30-7-2001.

[No. L-12012/207/94-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d)
of the I.D. Act, 1947.

Reference No. 63 of 1995

PARTIES :

Employers in relation to the management of UCO Bank
Patna and their workman.

APPEARANCES :

On behalf of the workman : Shri C. R. Mandal, Secy.,
All India UCO Bank
Staff Federation.

On behalf of the employers : Shri P. K. Sinha,
Law Officer.

STATE : Jharkhand

INDUSTRY : Banking

Dated, Dhanbad, the 16th July, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/207/94 dated, the 26th December, 1994.

SCHEDULE

“Whether the action of the management of UCO Bank, Patna in not regularising the services of Shri Suresh Kumar Paswan, Sweeper-cum-Farash and not paying him the wages payable to regular sub-staff is justified? If not, to what relief is the said workman entitled?”

2. The case of the concerned workman as per W.S. in brief is as follows :—

The concerned workman in the W.S. submitted that being selected he is working as Sweeper-cum-Farash in the branch of Raghunathpur under UCO Bank

in the district of Begusaral, Bihar since the month of February, 1987. He submitted that inspite of performing full duties in the said Bank the management used to pay him wages @ Rs. 2 per i.e. Rs. 60 per month and from the year 1989 he has been paid Rs. 5 only per day. In discharge of his duties in the same capacity the concerned workman submitted that not only he sweeps the premises and cleans also the furnitures and fixtures of the said branch but also brings out records, registers, files, vouchers etc. from the Almirah and Desks and place them in the respective tables and again keep them in the Almirah after office hours. He disclosed that since February, 1987 till date he is continuously working in the said branch and under the management although the management did not issue any formal letter of appointment. The concerned workman further submitted that inspite of his repeated request to confirm and put him in the post and pay him other benefits the management did not pay any heed to it. He submitted that according to the bi-partite settlement dt. 19-10-66 he is eligible to be confirmed as permanent staff of sub-cadre of the said branch and is entitled to get full wages as applicable to them with effect from the date of his appointment. As a result of which the concerned workman raised industrial dispute and for which the instant reference has been made before this Tribunal for adjudication. The concerned workman submitted his prayer to the effect that necessary award be passed conforming him in the service at UCO Bank as subordinate staff with effect from February, 1987 with full remuneration which he is entitled to get as per Bi-partite settlement.

3. The management on the contrary after filing W.S.-cum-rejoinder has denied all the claims and allegation which the concerned workman asserted in his W.S. The management in the W.S. has categorically denied the fact that the concerned workman is working as Sweeper-cum-Farash at branch of Raghunathpur of UCO Bank. The management submitted that actually he is working as Part time Sweeper on daily wages basis of Rs. 8 per day at present calculated on the basis of 25 days in a month. The management further submitted that Raghunathpur branch is consisting of only 640 Sq. ft. carpet area for which there was no reason on the part of the concerned workman to work full day there for the purpose of sweeping. The management also denied the fact that the concerned workman used to work as Farash and also apart from his job he used to bring out different registers including voucher in the office hours and also used to keep them in the Almirah after office hours every day. Admitting the fact of Rs. 2 per day as daily wages the management submitted that the said amount was paid to him on the basis of the part time work done by him. However, the said rate was changed from time to time and subsequently it came to Rs. 8 per day. The management also submitted that for sweeping the Bank absolutely on part time basis there was no scope to issue any appointment letter which has been claimed by the concerned workman. Actually he was engaged on daily rate and also on part time basis. The management further submitted that according to bi-partite settlement Shri Paswan is not eligible to be appointed as permanent staff of subordinate cadre of the branch. The Management further submitted that there is no scope at all to confirm him as full time subordinate staff. The management alleged that the concerned workman has raised this industrial dispute without any reason.

4. The points for decisions in this reference are :

"Whether the action of the management of UCO Bank, Patna in not regularising the services of Shri Suresh Kumar Paswan, Sweeper-cum-Farash and not paying him the wages payable to regular sub-staff is justified? If not, to what relief is the said workman entitled?"

5. DECISION WITH REASONS

The concerned workman in order to substantiate his claim has examined himself as Witness in this case, while the management declined to adduce any evidence. I find no dispute to hold that the concerned workman is working at Raghunathpur branch since 1987. There is also no dispute that

initially the management used to pay him daily wages @ Rs. 2 and ultimately it enhanced to Rs. 8 per day. It is the contention of the concerned workman that he was engaged by the management in the said branch as Sweeper-cum-Farash and thereafter on request of the Bank official he used to help the Bank staff in all manners such as bringing out ledger from the Almirah and to supply the same to the staff and also after banking hours he used to keep them in the Almirah. Apart from that job he also used to supply water to the staff and also used to post letters to the local post office under instruction from the Bank officials. Even he used to close the Bank store and window after office hours. He also submitted his application for regularisation of his services before the management which was duly forwarded but his prayer was ignored though prayers of other Sweepers were considered. During his evidence relevant application and connected papers are marked as Ext. W-1, W-2, W-3 and W-4 on admission. Considering his application marked as Ext. W-1 it transpires clearly that he submitted his application for his appointment as part-time sweeper. Therefore, the claim that he was engaged as Sweeper-cum-Farash finds no basis. During evidence the concerned workman has failed to produce a single scrap of papers to show that he was engaged by the management as Sweeper-cum-Farash. On the contrary it is the specific contention of the management that there was no scope to engage the concerned workman as Sweeper-cum-Farash. The management submitted that the carpet area of their branch at Raghunathpur is only 640 Sq. feet and for sweeping such a small area it is impracticable to engage a whole time sweeper. The management submitted further that they paid daily rated wages to the concerned workman according to the Circular issued by the Bank Ext. M-3 and for which they did not commit any illegality in the same. I have considered the document marked as Ext. M-3 and M-4 along with sketch map of the concerned branch and it appears that the area of the said branch is less than 850 Sq. feet. According to Ext. M-3 a Sweeper is entitled to get wages (a) Rs. 200 per month if the area of the branch is less than 850 Sq. feet. Relying on this circular the management submitted that they did not commit any illegality in paying daily wages @ Rs. 8 per day after that circular was issued. It is seen that the application of the concerned workman was forwarded but the management by their letter marked as Ext. W-5 admitted that the case of this workman was ignored though the cases of other 23 branches were considered. The Divisional Manager in the said letter requested the management to consider the absorption of the concerned workman in order to avoid future complications on consolidated wages of Rs. 200 per month since the case appears to be genuine. It is seen that inspite of that request the management did not consider necessary to absorb the concerned workman as Sweeper of their branch. However, the concerned workman during his evidence admitted that at present he is getting Rs. 15 per day. It is the contention of the concerned workman that not only his application for regularisation of his service was ignored by the management but also the management denied to pay wages as per rate inspite of his giving full days service in the Bank. It is the specific contention of the concerned workman that from morning till closing of the Bank he remains there and undertakes different work including supply of ledgers, vouchers etc. to the Bank staff. He also undertakes other different jobs under instruction of the Branch Manager. Inspite of taking all these works the management has ignored his case.

6. Considering submissions of both sides I find no dispute to hold that the concerned workman was engaged as part time sweeper in the said branch. As the concerned workman has failed to establish that he also as part of his duty used to work as Farash I find no sufficient reason to accept his contention. It is seen that the carpet area of the branch is within 800 Sq. feet. There is sufficient reason to believe that whole day is not required to sweep this small area. The concerned workman also during his evidence failed to establish that under instruction of the management he takes on other work in the said branch apart from the work of his sweeping and for which he has to remain in the branch from morning till its closing. If any voluntary service is rendered by the concerned workman it cannot be considered as part of his job and for which he is not entitled to get any benefit for the same or is entitled to place his claim for higher wages. Herein two aspects are to be considered—one in the matter of his absorption as subordinate part time

Sweeper of the bank and the other in respect of the wages which he is entitled to claim for the service which he renders every day. There is no dispute to hold that the concerned workman is working in the said branch since February, 1987, as part time sweeper. There is also no dispute to hold that his application for getting his appointment as part time sweeper was forwarded to the management but the management thought considered the cases of others, ignored his case. It is also admitted fact that Divisional Manager in his letter marked as Ext. W-5 requested the A.G.M. for absorption of the concerned workman in the Bank as his case was ignored. This part time claim of the concerned workman after careful consideration of facts and circumstances, I find stand on genuine footing. Now, the point for consideration is actually which amount the concerned workman is entitled to claim as wages for his part time job from the said branch of the Bank. According to clause 20 of the 7th Bipartite settlement on wage revision and other service condition dt. 27-3-2000 a part time employee in partial modification of clause (i) of the Bipartite settlement dt. 28-11-97 whose normal working hours per week are upto 3 hours in that case he will get minimum wages of Rs. 450 per month. While his working hours per week is more than 3 hours minimum but less than 6 hours in that case he will get Rs. 740 per month at the lowest. It has been submitted by the concerned workman that as he renders service to the Bank beyond 29 hours he is entitled to get half scale wages. I have already discussed above that the concerned workman in course of hearing has failed to justify with cogent reason that he works in the said branch from morning till its closing i.e. beyond 29 hours per week. Voluntary service cannot be considered as duty. Moreover, he also has failed to establish that he rendered voluntary service to the Bank beyond his schedule duty for the interest of the Bank. Therefore, in natural course the question which will crop up is actually which time may consume for completing work of his sweeping in carpet area less than 800 Sq. feet. According to my view in any circumstances it will not exceed one hour. As such in a week the concerned workman renders duty less than 6 hours. Therefore, according to last Bipartite settlement the concerned workman is entitled to get minimum wages of Rs. 740 per month. It has been submitted by the management and duly admitted by the concerned workman that at present he is getting wages of Rs. 15 per day i.e. Rs. 450 per month. According to my view he is entitled to get his minimum wages of Rs. 740 per month in view of my discussions above. As such after careful consideration of all the facts and circumstances and after hearing both sides I hold that the part time services as sweeper of the concerned workman not only should be regularised by the management but also the concerned workman will get minimum wages to the tune of Rs. 740 per month along with other facilities if any. In the result, the following Award is rendered:—

"The action of the management of UCO Bank, Patna in not regularising the service of Shri Suresh Kumar Paswan, Sweeper-cum-Farash and not paying him the wages payable to regular sub-staff is not justified. Consequently, the concerned workman is entitled to get Rs. 740 per month along with other facilities if any. He is also entitled to regularisation as part time Sweeper."

The management is directed to implement the Award as directed above within three months from the date of its publication in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 30 जुलाई, 2001

का प्र. 2178.—औद्योगिक विवाद प्रक्रिया, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिबिस्ट बैंक के प्रबन्धन के संबंध में निम्नलिखित और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण-I, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एन-12012/168/98-आई.ए.ए. (बी-II)]

सी. गंगधरान, अवर सचिव

New Delhi, the 30th July, 2001

S.O. 2178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad, as shown in the annexure in the Industrial Dispute between the employees in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 30-7-2001.

[No. L-12012/168/98-IR(B-II)]
C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri Syed Abdullah, B.Sc., B.L.,

Industrial Tribunal-I

Dated 31st day of May, 2001

Industrial Dispute No. 21 of 1999

BETWEEN :

1. D. Venkateswarlu (Died)
per LR's 2 to 4.
2. Smt. Kamamma W/o late
D. Venkateswarlu, aged about 44 yrs,
Ambedkarnagar, Tangutur,
Prakasham District.
3. D. Sreenivasulu S/o late D. Venkateswarlu
aged about 34 years, Ambedkarnagar,
Tangutur, Prakasham District.
4. D. Padmanaga, W/o Chandrabha,
aged about 30 years,
Rangasiddypally,
Chittoor District.

PETITIONERS

AND

Syndicate Bank, rep. by G.M., S.B. Zonel
Office, Pioneer House, 63.652,

Somajiguda, Hyderabad.

RESPONDENT

APPEARANCES :—

Sri B. G. Ravinder Reddy and Sri S. Prabhakar Reddy,
Advocates for the Petitioners.

Sri A. Krishnam Raju, Advocate for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Letter No. L-12012/168/98/IR(B)(II) dt. 25/27-1-1999 referred a dispute to this Tribunal under Clause (d) of Sub-Section (1) of Sub-Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 for passing an award on the following issues:

"In case of the reference 'whether the action of the management of the Syndicate Bank in dismissing the services of D. Venkateswarlu vide an order dated 5-9-1993 is commensurate to the gravity of the misconduct allegedly committed by the workman?

To what relief the said workman is entitled?"

The parties have appeared through their Advocates and filed their pleadings.

2. The workmen filed claim statements and the averments are as under :

The workman joined in the banking service of the Respondent as Attender on 18-9-1975 and during his 18 years of service and for his unblemished service over the period of 18 years and by dint of hard work he was promoted as clerk in 1989. So also given merit certificate twice for achieving the deposits mobilisation. While he was working as an Attender at Tanguturu Branch, he was placed under suspension and issued with charges sheet on 14-12-90

attributing misconduct and an enquiry was ordered for the alleged misconduct. The workman could not conduct his defence for himself more so his request to engage the services of Lawyer to conduct the enquiry was also not considered. Enquiry Officer held that the charges are proved vide his report dated 11-5-92. Without considering merits, the Management imposed the punishment of dismissal from service 5-9-92. The appellate authority has also failed to consider the material with proper perception. A conciliation was moved before the A.L.C. (Central) Vijayawada but the management did not agree to the suggestion of the ALC (Central).

3. The alleged misconduct relates to S.B. Account of individuals namely D. Chamma SB A/c 4675 (2) Venchalamma SB A/c. 13259, (3) Naidu SB A/c. 5742 and the alleged withdrawals of the amounts for the periods August and September, 1988 as per withdrawal slips dated 9-9-88, 13-9-88, 29-9-88 on which the workman alleged to have got the withdrawals slips passed for payment affixing his signature in witness of the L.T. marks thereon. In the course of the domestic enquiry, the Management did not examine those account holders in proof of the charges, so also the respective cashiers. The finger print expert has opined that the signature impression on the signature card of K. Naidu are unfit for comparison with the questioned Thumb impression. The Enquiry Officer has not considered the opinion of the finger print expert and failed to consider that there is no material as to the identity of the persons in respect of the 3 withdrawal slips. The enquiry proceedings are vitiated, however punishing authority and the Appellate Authority without considering the principles of natural justice and equity have passed the orders. Hence prayed to set aside the order of dismissal dated 5-9-92 and to direct reinstatement of the workman with retrospective effect granting all benefits entitled to.

4. During the pendency of the dispute workman died. So his legal representatives have come on record as per order in I.A. 74/99 dated 27-9-99 as the cause of action for adjudication of the dispute subsists.

5. The Respondent filed the counter in which the points raised are as under:

As per Bipartite Settlement provisions, permission to engage lawyer in departmental enquiry is possible only with the permission of the Bank and the Enquiry Officer has no locus-standi in the matter. The enquiry was reopened for the purpose of cross examination and it was fixed on 10-2-92 so also to produce the defence witnesses but the workman failed to get his defence representative and proceed with the enquiry, and abandoned his right to cross examine the witnesses. Taking into account of the evidence. It is during the enquiry, the Enquiry Officer after evaluating the evidence judiciously had rightly held that the charges were proved. As per the enquiry findings and that the charges were proved, the management after taking all circumstances of the case into consideration had imposed the punishment. Further, the Appellate Authority also considered the matter and confirmed the punishment.

6. The money belonging to 3 customers was misappropriated by falsely attesting the thumb impression of them on withdrawal slips. Earlier the workman introduced the 3 account holders to open the account into the Bank. An amount of Rs. 5,000 was fraudulently withdrawn on 29-10-88 from SB A/c. 5742 of Mr. Kunchala Naidu and a sum of Rs. 1000.00 was adjusted towards J.L. account of the workman and a balance of rupees was paid in cash. A sum of Rs. 5000.00 was withdrawn from SB No. 13259 of Ms. M. Venkatamma on 6-8-88 out of which Rs. 4077.00 was credited into the workman's account J.L. A/c No 1188 at the Branch. Similarly in the case of withdrawal of Rs. 1300.00 on 21-10-98 from SB A/c. 13259 of Ms. M. Venkatamma, it has come on record that token No. 10 was issued in respect of this withdrawal and also another withdrawal of Rs. 800.00 made by him from his own SB Account No. 20 at the Branch indicating that a total sum of Rs. 2,100.00 was received by the workman. The above facts on record coupled with confession of the workman himself clearly establish the charges levelled against him. Further it has come on record that in respect of Account No. 5742 of Mr. M. K. Naidu from which Rs. 19500.00 was withdrawn fraudulently by the workman. When the 2497 GI/2001—14.

account holder approached the Bank on 19-12-98 to withdraw a sum of Rs. 2,000.00 the account was showing a balance of Rs. 14,346.00 in the Pass Book. Having withdrawn fraudulently and to cover it up in the said Pass Book he made an entry of the figures as Rs. 23,000.00 in order to make the account holder believe that there was a credit balance of Rs. 23,000.00 in his account as on 10-12-98. Subsequently the petitioner credited a sum of Rs. 1,000.00 and Rs. 8,000.00 dated 1-3-89 and 24-4-89 respectively into SB No. 5742 of Mr. M. K. Naidu and the workman himself admitted that he had withdrawn Rs. 19,500.00 from the said SB Account No. 5742 affixing his own thumb impression on the relevant withdrawal form and also admitted that he has credited Rs. 18,000.00 in the said SB Account by borrowing money from outside sources. Similarly in respect of SB Account No. 4659 of Mrs. Chenchamma it came on record clearly that a sum of Rs. 3,500.00 was credited on 29-7-88 under the voucher prepared by himself on 18-8-88 which amount was earlier withdrawn by him.

7. Further the workman in his letter dt. 12-7-89 written in his own handwriting in Telugu admitted his complicity and at no time during the enquiry he disowned the said letter, as such his contentions are baseless. During the enquiry the branch manager and the investigation officers were examined by producing 37 documents to sustain the charges levelled against the workman. There was no necessity confessed that he committed serious irregularities in the city to examine the account holders as the workman himself cannot and nothing prevented him to examine them as defence witnesses.

8. The gravity of misconduct involved in fraudulent element and dishonesty does not warrant consideration to show lenient view when the misconduct which is grave in nature was proved, especially in Nationalised Banks dealing with public money, lest public trust and confidence in the financial institution would erode if lenient view is taken. As per Clause 19.5(1) Bipartite Settlement in respect of the charges the enquiry was conducted by appointing the Enquiry Officer. A copy of the Enquiry Report was also sent to workman for submitting his explanation vide letter No. 911/623(1)IRS dated 10-6-92, for which he requested to set aside the findings of the enquiry and exonerate him. Through letter No. 1158/623(1)IRS dated 20-7-92 the workman was issued an order imposing the punishment of dismissal from service after hearing him on 5-8-92, in which he along with defence representative participated by furnishing written submission reciting that he had not passed withdrawal slip and action should be taken against those who had passed it. The amounts were drawn by Naidu himself as per the letter of Naidu enclosed with the written submission but the disciplinary authority was not inclined to take cognizance of such letter at that stage as it was an after thought. Hence prayed to dismiss the claim by confirming the impugned order of dismissal.

9. The point for adjudication is whether the workman is entitled to the relief of reinstatement by setting aside the impugned order of dismissal taking into consideration of the proportionality of the punishment since the workman had died during the pendency, whether the legal representatives to be granted with any relief. On behalf of the Petitioners a Memo was filed on 18-8-2000 in the Tribunal to the effect that the domestic enquiry proceedings are not disputed and prayed to decide the dispute taking into consideration of Section 11-A of the I.D. Act.

10. The employer had filed relevant documents inclusive of the minutes of the enquiry and its findings. As the domestic enquiry proceedings are not disputed the documents pertaining to the enquiry proceedings have been relied as material on record for reappraisal of the evidence and to consider whether the material on record would establish the charges of misconduct levelled against the deceased workman. The material on record i.e. (Ex. M1 to M42) were marked by consent. It is worth while setting the record straight so as to have a clear idea of the complicity of the workman and the evidence on record in proof of the charges of misconduct. Ex. M34 is the charge sheet dt. 12-12-1990 served to the workman in which it is alleged that while he was working as an Attender in Tanentur branch during the period 18-9-75 to 5-1-89,

particularly during the period August and October 1988 he made certain withdrawals from the SB Account of the account holders namely Mr. K. Naidu, Venkatamma and D. Chenchamma covered by A/s No. 5742, 13259 and 4695 respectively. The allegations are that the said account holders had not withdrawn the amounts on the respective dates from their SB accounts but the workman got withdrawal slips filed and passed for payment attesting the thumb marks put on the respective withdrawal forms. The act or omissions of withdrawal of the amounts from the SB Account of the account holders was done fraudulently and dishonestly which act is prejudicial to the interest of bank as per clause 19.5(j) of the Bipartite Settlement. The workman in his reply Ex. M35 stated that he already gave explanation to the Vigilance Cell which may be treated as explanation. Ex. M36 is enquiry minutes commenced on 16-12-91 in the presence of the workman and the Management.

11. The Management witness by name K. S. Prasad, Manager was examined as M.W. 1 who stated that while he was working at Tanguturi Branch during July, 1987 to June 90 one A. Subba Rao sent a complaint Ex. M1 by marking the copy to him in which it was complained that the workman had withdrawn Rs. 2,000.00 from the SB Account of Kunchala Naidu and the account holder Kunchala Naidu was called for to hand over the pass book who came after a week and on that the pass book entries were verified and found discrepancy in the balance of the amount. It was seen that an entry was made by the workman in his own hand writing by incorporating Rs. 23,000.00 in SB Book, subsequently the Vigilance Unit Hyderabad had taken up the enquiry and seized the books. Kunchala Naidu asked him to pay the balance of the amount lying in the SB Account and he was paid with the amount. The witness has identified the complaint dt. 7-6-89 (Ex. M9) sent against the workman about the withdrawal of Rs. 20,000.00 in the SB Account of Kunchala Naidu so also the pass book.

12. MW2 Gourishankar, Deputy Divisional Manager Vigilant Unit gave the statement that he investigated the case relating to the fraud in respect of 3 SB Accounts of Tanguturi Branch and he found that Kunchala Naidu an illiterate had opened SB Account bearing A/c No. 5742 at Tanguturi Branch during 1978 and account holder was introduced by the charged workman. As on 7-9-88 the account holder had a closing balance of Rs. 25,531 in the pass book on which date the workman obtained the withdrawal bearing No. 082395 by acknowledging the receipt withdrawal for issuing registry and withdrawn of Rs. 9000.00 by attesting the thumb marks of the depositor on the withdrawal slip. Similarly on 13-9-88 there was balance of Rs. 16,531.00 in the said account and on the same date the workman submitted the withdrawal slip and withdrawn Rs. 5,500.00 by duly identifying the thumb marks of the depositor. Similarly as on 20-10-88 in the same account there was a closing balance of Rs. 11,031.00 on which date the workman obtained withdrawal and acknowledged the issuance and withdrawn Rs. 5,000.00 attesting the thumb mark of the depositor duly identifying it. Out of Rs. 5,000.00 withdrawn actually Rs. 4,000.00 was received paid in cash and a balance of Rs. 1,000.00 was deducted and adjusted to his own 'JL' account 27/88. Similarly on 1-3-89 and 24-4-89 the workman had remitted Rs. 10,000.00 and Rs. 8,000 respectively in SB Account 5742 of Kunchala Naidu. On 19-12-88 Rs. 2,000.00 was withdrawn by Naidu and when the pass book was returned he showed the balance as Rs. 23,000.00 to make him believe that there was a balance of Rs. 23,000.00 outstanding as against the actual balance of Rs. 4346.30 by then. On receipt of a complaint against the workman and during the enquiry on 12-7-89 the workman gave a letter addressed to him admitting that due to financial pro-

blem he had withdrawn the amounts of Rs. 9,000.00 and 5,500.00 and 5,000.00, in total Rs. 19,500.00 on 7-9-88, 13-9-88 and 29-10-88 respectively, and he also admitted that subsequently he remitted back Rs. 18,000.00 in the said account. During the enquiry the witnesses had identified 14 documents which were marked as Lxs. M5 to M19. Similarly he gave statement about the withdrawal of the amounts from the SB Account of Venkatamma's account No. 13259 and Mr. Chenchamma SB Account No. 4695 and in the same manner by presenting the withdrawal slips attesting the thumb marks of the account holders. The witnesses has identified the documents pertain to withdrawal which were marked as Ex. M20 to M27. He further deposed that the withdrawal forms were sent for Finger print Expert along with the thumb impression of the workman for the purposes of identification. He also identified the documents Ex. M28 to M37 during the enquiry. Thus he gave thread-bare details of the various dates on which withdrawals were made by submitting the withdrawal slips attesting the thumb marks of depositor by workman withdrawing the amounts. As the workman did not secure the presence of the defence representative and proceed to cross examine the witnesses, inspite of giving time, the cross examination was closed giving reasons for closure of the enquiry. On the basis of the oral statements and the documentary evidence regarding the fraudulent withdrawals of the amounts by the workman from the SB Accounts the enquiry officer submitted report Ex. M37 giving findings issue-wise and concluded that the workman had acted prejudicial to the interest for the bank and the account holders who keep the deposits in the Bank in the SB Account. Thus the misconduct covered by the charge is proved with reference to the material on record. Ex. M38 explanation was submitted by the workman to set aside the findings of the enquiry officer. Subsequently personal hearing was fixed by the management on 5-8-92 to hear the delinquent. Again on that date the workman submitted explanation along with the letters said to have been given by the three account holders stating that they had received the payments pertaining to their SB account. After considering the explanation, the disciplinary authority had passed the final order Ex. M11 imposing punishment of dismissal from service for misconduct that has been committed by him, which attracts Clause 19.5(j) of Bipartite Settlement. The Appellate Authority passed Ex. M42 order dismissing the appeal and confirmed the punishment.

13. The learned counsel for the workman submits that during the domestic enquiry the '3' account holders were not at all examined to rule out the possibility that the amounts withdrawn from time to time by them submitting the withdrawal slips which were identified by the workman in good faith. It is also pointed that the Finger Print Expert gave opinion that some of the disputed thumb impressions have not been tallied with the specimen thumb impression and that the Finger Print Expert was not examined to rule out the benefit of doubt. Apart from it when the '3' account holders themselves have unequivocally admitted the respective withdrawals from the SB Accounts which supports the fact that the workman was made scape goat in simply attesting withdrawal slips since they are illiterates and he got acquittance with them.

14. These contentions are neither tenable nor sustainable in view of the clinching evidence of the Branch Manager and the Deputy General Manager M.W.1 and M.W.2, whose statements are based on documentary proof showing various withdrawals and vouchers. They gave thread-bare details and identified the bank transactions pertaining to the withdrawal of the amounts in question. In Exs. M2 to M33 are the various entries of the ledgers and pass books transactions give a clear idea of the transactions and a careful study of these entries reveals the modus operandi of the workman in withdrawing the amounts from 3 SB Accounts from time to time. In Ex. M13 letter dt. 12-7-89 the workman voluntarily gave statements to the Vigilance Officer which is nothing short of confession of the withdrawal of the amounts and misappropriation. He made it clear that as he was hard pressed for the amounts during the relevant period and subsequently remitted back the amounts to the respective accounts. In view of the unequivocal admission coupled with the crystal clear evidence there is no hesitation to hold that the workman had withdrawn the amounts fraudulently from time to time from 3 SB Accounts.

15. It has been held by the Hon'ble Supreme Court in a decision reported in J. D. Jain Vs. B.I A.I.R. 1982 S.C. 673 that there is no necessity to examine the complainant when there is a confession and other circumstantial evidence on record. In the light of the above decision, the contentions of the workman are not tenable. The workman could have examined those 3 account holders before the Enquiry Officer if it was a fact they actually had withdrawn the amounts by presenting withdrawal slips as pleaded at a belated stage. To get over and wriggle out of the situation the workman along with explanation secured the letters of the 3 account holders to show that they had received the amounts covered by the withdrawals. It is an after thought and he had prevailed over them to give such letters so as to escape. In a decision of Hon'ble High Court in K. Venkateswarulu vs. Nagarjuna Gramina Bank [1995(1) ALD page 500] it was made clear that when the delinquent person admits the charges before the commencement of the enquiry, the Enquiry Officer need not examine the witnesses. The domestic enquiry proceedings are not like Civil or Criminal proceedings which required to follow strictly principles of Evidence Act and that the Finger Print expert to be tendered for cross examination by the delinquent. The facts of the instant case are identical to the facts of the case cited supra so on the same legal analogy the contentions does not hold water.

16. The next contention raised for the workman is that when the employer failed to consider the previous record before imposing the extreme punishment as required under Clause 19(12)(o) of the Bipartite Settlement, the punishment is to be set aside. To support the above contention he placed reliance upon the decisions i.e. (1) 1988(1) ALT page 65 Division Bench (2) 1980(1) FJR page 70.

17. No doubt the Disciplinary Authority is required to consider the past record while imposing

punishment when the charges were held proved. But it need not be expressly mentioned in the impugned order that the past record was gone through. It may be inferred that the past record was impliedly considered by the concerned authority. However a reading of the final order Ex. M41 in which it is mentioned that there are no extenuating factors to consider the case and to impose lesser punishment and the punishment imposed is not disproportionate to the gravity of the act of misconduct.

18. It is also urged that the Tribunal/Labour Court by invoking Section 11-A of the I.D. Act exercising judicious discretion may impose lesser punishment on the workman taking into consideration that the workman had worked in the organisation for 23 long years and except the 3 incidents, there is no other bad record and when the hallmark rule is that the punishment cannot be disproportionate to the gravity of the charge. While repelling the contentions to exercise lenient punishment, the learned counsel for the management, by placing reliance upon the following decisions (1) State Bank of India vs. Tarun Kumar Banerjee and others, 2000(8) Supreme Court case page 12, (2) 2000 Janata Bazar Cooperative Stores vs. Secretary of S. J. Singh 2000(7) Supreme Court case page 517, (3) Depot Manager APSRTC vs. E. K. Goud 2000(4) ALT page 365, (4) APSRTC vs. Presiding Officer Industrial Tribunal-II, Hyderabad 2000(5) ALD page 669, has urged that when misappropriation of the amounts are involved it is unwarranted to show uncalled for sympathy and not justified to impose lesser punishment by the Tribunal/Labour Court.

19. In theory it may be argued that anything and everything should be done to an employee to the extent possible as Section 11-A of the I.D. Act provides for showing discretion to impose lesser punishment taking into consideration that the punishment should be proportionate to gravity of the charge but while applying the principle there is a rule of caution and the rule cannot be a mockery. Where money transaction is involved and the employee who has not worked with trust and reposed confidence especially in Banking service if he fails to discharge the duty honestly the very confidence of the public will be lost and erodes. The principles laid down in the above decisions gives a clear caution that a judicial authority cannot show uncalled for sympathy and reduce the punishment arbitrarily. There are no extenuating circumstances in this case to impose lesser punishment than to confirm the punishment imposed by the Disciplinary Authority.

20. In the result an Award is passed dismissing the claim by upholding the punishment as justified. No orders as to costs.

Dictated to the Shorthand writer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 31st day of May, 2001.

SYED ABDULLAH, Industrial Tribunal

Appendix of Evidence

No oral evidence adduced for either side.

Documents marked for the Petitioner—Nil

Documents marked for the Respondent :

- Ex. M1—Letter dt. 7-6-89 of Sri A. Subba Rao addressed to AGM, ZO, Vijayawada.
- Ex. M2—OG 5(c)/8-5-1978 of SB A/c. 5742 of Kunchala Naidu.
- Ex. M3—OG 14 I/8-5-1978 of SB A/c. 5742.
- Ex. M4—Ledger Sheet 4169 of SB A/c. 5742 showing the entries from 28-4-1980 to 24-4-89.
- Ex. M5—WS No. 083295/7-9-1989 for Rs. 9,000 of SB A/c. 5742.
- Ex. M6—WS No. 083428/13-9-88 of SB A/c. 5742 for Rs. 5,500.
- Ex. M7—WS No. 158407/20-10-88 for Rs. 5000 of SB A/c. 5742.
- Ex. M8—Officers cash scroll of 7-9-1988, 13-9-1988, 29-10-1988.
- Ex. M9—OG 73/28-10-88 for Rs. 1,000 of JL 27/88 of D. Venkateshwarlu.
- Ex. M10—OG 73/1-3-89 for Rs. 10,000 of SB 5742.
- Ex. M11—OG 73/24-4-89 for Rs. 8,000 of SB 5742.
- Ex. M12—SB A/c. 5742 pass book showing entries upto 19-12-1988.
- Ex. M13—Letter dt. 12-7-1989 of D. Venkateswarlu addressed to Shri M. Gowri Shankar, Dy. D.M., Vigilance, R.I. Hyderabad.
- Ex. M14—DF 157/21-11-85 of SB A/c. 13259 of Medida Vankamma.
- Ex. M15—WS 082576/6-8-1988 of SB A/c. 13259 for Rs. 5,000.
- Ex. M16—WS No. 083467/14-9-1988 for Rs. 800 of SB 13259.
- Ex. M17—WS No. 083612/21-9-88 for Rs. 1,300 of SB 13259.
- Ex. M18—OG 73/6-8-1988 for Rs. 4,077 of JL 1/88 of D. Venkateswarlu.
- Ex. M19—WS 083611/21-9-88 for Rs. 800 of SB A/c. 20.
- Ex. M20—JL Ledger folio 158 showing the entries of JL 1/88 of D. Venkateswarlu.
- Ex. M21—SB A/c. Ledger sheet 192393 of SB 13259.
- Ex. M22—OG 5(c)/15-10-77 of SB A/c. 4695 of Dasari Chenchamma.
- Ex. M23—WS No. 082805/18-8-88 for Rs. 5,500 of SB A/c. 4695.
- Ex. M24—SB A/c. Ledger sheet No. 00860 of SB A/c. 4695.
- Ex. M25—Xerox copy of SB A/c. 4695 pass book.
- Ex. M26—Letter dt. 2-8-89 of Kunchala Naidu addressed to the Manager, Tangutur Branch.
- Ex. M27—WS No. 159220/9-12-88 for Rs. 1,000 of SB A/c. 20 of D. Venkateswarlu.
- Ex. M28—OG 73/29-7-88 for Rs. 3,500 of SB A/c. 4695 of D. Chachamma.
- Ex. M29—WS No. 076164/10-2-88 for Rs. 3,500 of SB 4695.
- Ex. M30—WS No. 076506/23-2-1988 for Rs. 3,020 of SB 4695.
- Ex. M31—WS No. 159219/9-12-88 for Rs. 1,000 of SB 4695.
- Ex. M32—Report of the finger print expert on the examination of thumb impressions.
- Ex. M33—Withdrawal slip issue register showing the entries from 2-9-88 to 30-12-88.
- Ex. M34—Charge Sheet-cum-suspension order dated 14-12-1990.
- Ex. M35—Letter dated 28-2-1991 from C.S.E.
- Ex. M36—Minutes of Enquiry proceedings in charge sheet dated 14-12-1990.
- Ex. M37—Enquiry Report dated 11-5-1992 in charge sheet dated 14-12-1990.
- Ex. M38—Letter dated 20-7-1992 from C.S.E.
- Ex. M39—Letter dated 20-7-1992 by D.A. to C.S.E.
- Ex. M40—Proceedings dated 5-8-1992 before the D.A.
- Ex. M41—Order dated 5-9-1992 passed in charge sheet dated 14-12-1990.
- Ex. M42—Order dated 3-5-1993 by the Appellate Authority.

नई दिल्ली, 31 जुलाई, 2001

का. आ. 2179—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिडिकेट बैंक के प्रबन्धन के सबद्ध नियोजकों और उनके कर्मचारों के बीच प्रबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम म्यायालय बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[स एल-12012/338/90-आईआर(बी-II)]
सी गंगाधरण, अव्वर सचिव

New Delhi, the 31st July, 2001

S.O. 2179.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their

workman, which was received by the Central Government on 31-7-2001.

[No. L-12012/338/90-IR(B-II)]
C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

'Shram Sadan', III Main, III Cross, II Phase
Tumkur Road, Yeshwanthpur, Bangalore

Dated : 17th July, 2001

PRESENT :

HON'BLE SHRI V. N. KULKARNI,

B.Com., LLB, Presiding Officer

CGIT-Cum-Labour Court, Bangalore

C.R. No. 72/92

AWARD

I Party :

Shri K. Muraleedharan Nair,
Krishna Sadanam,
Nadoorkollu,
Amarvilla P.O.,
Trivandrum Dist.,
Pin-695122.
(Advocate—Shri Sathyanarayan).

II Party :

The Chairman and Managing,
Director,
Syndicate Bank,
Manipal, Udupi,
Dakkshina Kannada,
Karnataka State,
Pin code-576119,
(Advocate—Shri Pradeep Sawkar).

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/338/90-IR-B.II dated 18-3-1991 for adjudication on the following schedule.

SCHEDULE

"Whether the demand raised by Shri. K. Muraleedharan Nair, Field Assistant, seeking employment in Syndicate Bank beyond 7-12-1989 is legal and justified? If so, what should be the terms of this employment?"

2. This reference is filed by Mr. Muraleedharan Nair, Field Assistant seeking employment with the Syndicate Bank.

3. It was submitted by the learned counsel for the first party and the learned counsel for the Second party that this matter be clubbed together with C.R. No. 70/91 and whatever evidence is recorded in Cr. 70/91 be read as evidence in this case and by clubbing this with C.R. No. 70/91, this reference may be disposed off.

4. It was further submitted by Mr. Pradeep Sawkar that this workman, Shri Muraleedharan Nair is also one of the workmen in CR No. 70/91.

5. In view of the resubmissions I proceed to pass the following order.

ORDER

The reference is rejected with a direction to keep a copy of award of CR No. 70/91 be kept in this case.

(Dictated to PA transcribed by her corrected and signed by me on 17th July, 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का. आ. 2180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार नेशनल इंडियन कं. लि. के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[सं. एल 17011/32/89—अर्थ और (बी-II)]

सी. गंगाधरन, अवर सचिव

New Delhi, the 31st July, 2001

S.O. 2180.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of National Insurance Co. Ltd. and their workman, which was received by the Central Government on 31-7-2001.

[No. L-17011/32/89-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/257/89

Presiding Officer : Shri K. M. RAI

Shri Manoharlal Hingorani,
S/O Shri Narain Das Hingorani,
R/O Vaibhav, 27,
Panchsheel Nagar,
Ravindra College Road,
Bhopal.

Applicant.

Versus

The Divisional Manager,
National Insurance Company Ltd.,
38, Bhadbhada Road,
Bhopal.

Non-applicant.

AWARD

Passed on this 16th day of July, 2001

1. The Government of India, Ministry of Labour vide order No. L-17011/32/89-IR B-II dated 4-12-89 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of National Insurance Company Ltd., in imposing the penalty of reversion to the lower post of Record-clerk, Shri Manoharlal Hingorani is justified? If not, to what relief the workman is entitled to?”

2. The case for the workman is that initially he was appointed as Inspector by the management. On 11th Oct. 1983, he was served with a chargesheet for committing misconduct as under :—

“That Shri Manoharlal Hingorani while functioning as Inspector in National Insurance Company, Bhopal during the year 1980-81 falsely insured 2 buffaloes N3 and N4 which were not existing.

As a result of which the claimant Shri Jainendra Jain had received Rs. 4000 as a claim for non-existing buffalo N4. This has caused loss to the National Insurance Company to the tune of Rs. 4000.

That this gross misconduct on the part of Shri Hingorani shows that he acted in contravention of Rule 3(1) of the General Insurance (Conduct), Discipline and Appeal Rules, 1975”.

3. That the charges so alleged vide chargesheet dated 11-10-83 against the applicant, do not in fact and in law constitute any misconduct at all. It has been alleged that the applicant has contravened rule 3(1) of the General Insurance (Conduct, Discipline and Appeal) Rule 1975 whereunder the applicant has committed gross misconduct.

For the sake of convenience the alleged rule 3(1) is reproduced here under :—

Rule 3 General :

1. Every employees shall at all times :

- (i) Maintain absolute integrity
- ((ii) Maintain devotion to duty, and
- (iii) do nothing which is unbecoming of a public servant
- (iv) conform to and abide by these rules and shall observe, comply with and obey all orders and directions which may, from time to time, be given to him, in the course of his, official duties by any person or persons under whose jurisdiction, superintendence or control he may for the time being be placed.

It is further submitted that Rule 4 envisaged that the following acts of commission and or commission shall be treated as misconduct :—

- (i) Theft, fraud or dishonesty in connection with the business or property of the corporation/subsidiaries or of the property of another person within the premises of the corporation/subsidiaries.

- (ii) Taking or giving bribes or any illegal gratification.
- (iii) Possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another person the employee cannot satisfactorily account for.

Furnishing false information regarding name, age, father's name, qualifications, ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment.

3. After receiving the chargesheet, the workman submitted his explanation on 23-11-83. The charges framed against him were fabricated any they do not constitute any misconduct under sub rule-1 of Rule 3 of General Insurance (conduct, discipline and appeal) Rules 1975. During the course of D.E. the workman was not afforded ample opportunity to cross-examine the prosecution witnesses. He was also not supplied the relevant copies of the documents to establish his defence before the Enquiry Officer. He was also not allowed to produce defence witnesses before the Enquiry Officer to prove his defence. The enquiry was also proceeded ex parte against him in utter disregard of the principles of natural justice. The finding of enquiry officer is baseless and perverse. He was neither given showcause notice nor personal hearing was granted to him. The punishment of reverting him to the lower rank of record clerk with basic pay at the lowest scale passed on 10-2-86 by the management is illegal and deserves to be quashed. He is entitled to promotion to the higher post which was being held by him at the time of reversion. He is entitled to all other consequential benefits also.

4. The case for the management is that the workman Manohar Lal Hingorani on his own opted for changing the cadre and therefore he was appointed as Inspector on probation. He could not satisfy the terms of employment as Inspector within the period of probation. Therefore he was reverted to the original cadre of assistant. He was involved in various irregularities for which he was chargesheeted legally. The charges framed against him were based on the facts and circumstances of the case. The DE was properly conducted and

he was given ample opportunity to defend his case properly before the Enquiry Officer. His reply was not found satisfactory. He was given sufficient opportunity for submitting his defence during the course of enquiry. The opportunity of personal hearing was also given to him. The enquiry officer had reasonably considered the material on record and held the charges proved against the workman. The finding of the Enquiry Officer is perfectly just and proper which does not require any interference. The report of the Enquiry Officer was accepted by the competent authority and after careful examination the appeal was rejected in a legal manner. No prejudice has been caused to the workman. He is not entitled to any relief as claimed by him.

5. The following issues have been framed and the findings thereon are noted hereinafter :—

1. Whether the enquiry is proper and legal ?
2. Whether the management is entitled to lead evidence before this tribunal ?
3. Whether the charges of misconduct are proved on the facts of the case ?
4. Whether the punishment awarded is proper and legal ?
5. Relief and costs ?
6. Issues No. 1 & 2 :

This tribunal has held on 31-1-96 by a separate order holding the Depts. Enquiry against the workmen as just and proper. In view of this finding, the management is not required to lead any evidence to prove the misconduct of the workman. In view of this earlier finding, these issues need no consideration at all.

7. Issues No. 3 & 4 :

From the perusal of DE papers, it appears that the enquiry officer had given the ample opportunity to the workman to prove his defence before him by participating in the enquiry. The workman had participated in the DE and cross examined the witnesses also. The Enquiry Officer has deeply considered the documentary and oral evidence on record before arriving at a particular conclusion. This appreciation of evidence on record does not appear to be perverse at

all. This court therefore has no jurisdiction to re-appreciate the evidence produced before the Enquiry Officer during the course of domestic enquiry by sitting as a court of appeal. This enquiry does not suffer from any legal infirmity.

8. The facts of the case clearly goes to prove the charge of misconduct levelled against the workman. The charges are of a serious nature and the punishment in the circumstances of the case is not disproportionate as the workman has not been terminated from service. The management has taken a considerate and rational view to retain the workman as the Assistant in his service. This punishment therefore does not appear to be severe at all.

9. In the light of foregoing reasons, it is held that the charges of misconduct had been legally proved against the workman during the course of enquiry and the punishment of reverting the workman to the post of assistant is absolutely just and proper. No interference in this connection is required. Issues No. 3 & 4 are answered accordingly.

10. Issue No. 5 :

On the reasons stated above, it is held that the DE was properly conducted against the workman and the management had rightly imposed the penalty of reversion to the lower post of record clerk on the workman Manoharlal Hingorani. This penalty imposed by the management on the workman does not require any interference. The reference is accordingly answered in favour of the management and against the workman.

12. Copy of the award be sent to the Ministry of Labour, Government of India as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का. प्रा. 2181—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बेंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/191/91-आई आर (बी-II)]

मो. गंगाधरन, प्रवर सचिव

New Delhi, the 31st July, 2001

S.O. 2181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 31-7-2001.

[No. L-12012/191/91-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT 'SHRAM SADAN' III MAIN, III CROSS,
II PHASE, TUMKUR ROAD, YESWANTHPUR,
BANGALORE

Dated : 17th July, 2001

PRESENT :

Hon'ble Shri V. N. Kulkarni, B.Com, LLB.,
Presiding Officer, CGIT-cum-Labour Court,
Bangalore.

C.R. No. 70/91

I PARTY :

Syndicate Bank Staff Union,
5, Meeran Sahib Street,
Mount Road
Madras-600002
(Advocate—Shri B. D. Kuttappa).

II PARTY :

1. Chairman and Managing Director
Syndicate Bank,
P.B No 1, Manipal-576119,
Karnataka.
(Advocate—Shri P. S. Sawkar)

2. The President,
Syndicate Agricultural & Rural
Development Foundation,
Administrative Office,
Hiriadka-576113
(Advocate—Shri B. C. Prabhakar)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947.

SCHEDULE

"Whether the Syndicate Bank Staff Union is justified in demanding the reinstatement of 263 field Assistants (list enclosed) employed by the Syndicate Agricultural and Rural Development Foundation (formerly known as Syndicate Agricultural Foundation) by the Syndicate Bank and thereafter regularisation of services by the Syndicate Bank. If so, what relief the workmen are entitled to?"

2. First party is the Syndicate Bank Staff Union. The workmen of Syndicate Agriculture Foundation and Syndicate Bank through its union raised this dispute and the Central Government by its order dated 23rd October, 1991 referred the dispute. The first party Union workmen were working as Field Assistant and they are not regularised and they are removed from service therefore, dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. It is seen from the records that the first party union has filed a very lengthy Claim Statement giving all the details. In order to dispose off this reference, few facts are necessary and they are as under :—

5. The workmen were working as Field Assistants and were performing the work of Syndicate Bank and they were asked to work in Farm Clinics. Farm Clinics were opened, and they were directly controlled and managed by the Syndicate Bank through the Agriculture Foundation. The foundation have neither the finances nor other prerequisites to run these Farm Clinics and therefore the workmen are the employees of the Syndicate Bank.

6. Infact it is only the Syndicate Bank, where this peculiar feature was prevailing. The Agricultural Assistants in other Banks were directly recruited and employed by the respective Banks. The Syndicate Bank, taking advantage of the demand and supply in the labour market fully exploited the massive unemployment prevailing in the country and started Syndicate Agriculture Foundation and it has been totally sponsored by the Syndicate Bank.

7. In para 4 and 5 of the Claim Statement, history of the Bank is given.

8. It is the further case of the union that the duties and responsibilities of the workmen have been described in a Hand Book issued and published by the Syndicate Bank under the title "All about Farm Clinics" and the duties are stated in detail as per para 6 of the Claim Statement.

9. The Syndicate Bank was nationalised in the year 1969, along with other major banks in the Country.

10. In paras 7 and 8 procedure of recruitment and other things are stated. The duties of Agricultural Assistant is also given in para 8.

11. It is the further case of the Union that through these Field Assistants are recruited by the Agriculture Foundation, it is the Syndicate Bank, which is in fact is the employer of the Field Assistants and the circumstances which establishes that the Field Assistants are the employees of the Bank as per clause a, b, c, and d of para 9. It is said that the Agriculture Foundation is founded by the Syndicate Bank, Farm Clinic are sponsored by the Bank and suitable candidates were appointed as Field Assistant and they are supervised by the Manager of the Bank and Development Officer. Wages of these workmen were paid by the Syndicate Bank, by crediting the same to the account of these Field Assistants in the respective Branches of the Syndicate Bank.

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12. It is the further case of the Union that the object of establishing and starting the Farm Clinics is rural integral development, which was one of the policies laid down by the Government of India. Details are given in para 12 and 13 of the Claim Statement. A Comparison of the codified duties of the Agricultural Clerks/Assistants in terms of the Bipartite Settlement are given in para 13 and it is said that the Field Assistants discharging the work of the Bank accordingly.

13. In para 14, it is said that having regard to the nature of employment of these field assistants, it is clear that they are doing the work of Syndicate Bank and they are paid by the bank and that their work was being supervised by the Syndicate Bank's Officers and the power of disciplinary action was also with the Syndicate Bank. The action of the bank is in utter disregard to the provisions of Article 23 of the Constitution of India and also Article 38, 39 and 43 of the Constitution of India.

14. It is the further case of the Union that the Syndicate Agriculture Foundation has no real existence and it was working in the premises of the Syndicate Bank. The officers of the Agricultural Foundation were the employees of the Syndicate Bank. It did not have any funds of its own nor did it have a balance sheet of its own at any time. In para 15 the duties and responsibilities of the workmen are stated. The Syndicate Bank has exploited them and their demand for absorption and regularisation is legal. The termination is illegal. It is also said that the workmen filed Writ Petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court in Writ petition (Civil) No. 708 of 1986. The Hon'ble Supreme Court directed that they may approach the Hon'ble High Court of Karnataka for their reliefs. Thereafter, the Field Assistants Union on behalf of the employees filed a Writ petition in W.P. No. 10541 of 1986. The Writ Petition was allowed and the reliefs were granted. However, on an appeal to the Division Bench, the appeal was decided on the ground that the learned Single Judge should not have gone into the questions of fact without recording the evidence. The special Writ Petition filed was rejected and therefore the present dispute is raised.

15. The workmen did not receive benefits like Provident Fund Bonus, Leave Fare Concessions, Medical Aid etc. It is said that the Field Assistants are the workmen within the meaning of Section 2(s) of the Industrial Disputes Act and to employ any workmen as temporary and continue him for years with the object of depriving them of the status and privileges of permanent workman is an unfair labour practice, which is prohibited by Section 25-T read with Section 2(a) and Schedule 5 of the said Act. The action of the management is illegal.

16. Some decisions of Hon'ble Supreme Court are cited in the Claim Statement and they are AIR-1986 SC 180, AIR 1982 SC 879 and AIR 1986 SC 584. The union for these reasons has prayed to pass award in its favour.

17. There are two managements in the Second Party. First 'A' Management is Syndicate Bank and the Second Management is 'B' Syndicate Agriculture Foundation.

18. The case of the Syndicate Bank i.e. Second Party 'A' management is in brief as under :

19. The main contention of the Bank is that no industrial dispute exists between the first party and the Syndicate Bank and the employees of the Syndicate Agriculture Foundation have no legal right to raise this dispute against the Syndicate Bank.

20. There is no relationship of master and servant between the Syndicate Bank and the employees of Syndicate Agriculture Foundation. The workmen were never employed by the Bank. The employees are not workmen as defined under Section 2(s) of the Industrial Dispute Act.

21. It is the further case of the bank that one of the Field Assistants Narendra Chandra Behera had filed a case before the Orissa High Court claiming similar relief against Syndicate Bank in O.J.C. No. 3756 of 1990 and the High Court of Orissa came to the conclusion that the Syndicate Agriculture Foundation is a separate entity. The Hon'ble High Court of Orissa dismissed the case of Narendra Chandra Behera.

22. It is the further case of the bank that the very purpose of running a farm clinic and giving training to field assistants was to give them opportunity to involve themselves in the developmental work in their own villages so that they can develop their skills. The farm Clinic itself was expected to operate in any village for a maximum period of 5 years and after working for 5 years, the field assistants are supposed to be in a position to start their own employment ventures in their own villages and therefore they have no right of regularisation or reinstatement.

23. Syndicate Bank is a nationalised bank having its Head Office at Manipal. It has given the history in para 4 of the Counter.

24. It is the further case of the Management that Syndicate Agriculture Foundation is a society registered under the Mysore Societies Registration Act, 1960. It was registered on 24th May, 1966. The main aim of the foundation is to promote technical literacy among the farmers thereby helping them in modernisation of agricultural practice so that village economy improves. The object of the foundation is given in para 5, 6 and 7 of the Counter.

25. It is the further case of the bank that there was no need for the bank either to conceive the idea of forming farm clinics or appoint field assistants and train them. The bank being a pioneer in the field of agriculture and rural development decided to agree to the request of the foundation. Agriculture Foundation is to run on voluntary contributions and subsidies received from public and various other organisation including governmental grants. The relationship between the Bank and the Federation on this count was that of Donor and Donee. All the expenses towards maintenance of farm clinics, payment of salary to field assistance were being reimbursed to the account of the foundation. There are separate balance sheet. The Field Assistance were appointed directly by the foundation.

26. It is the further case of the bank that the farm clinic is under the guidance of local bank manager. The bank was only given training.

27. It is the further case of that the concept of Apprenticeship is to impart training so that a person can get himself equipped to do similar kind of job if an opportunity is laid out in future. The regular staff is recruited only through the Banking Service Recruitment Boards.

28. The first party have misquoted the contents of the foreword to the Hand Book titled "all about farm clinics". The handbook was published to educate the Branch Managers and the Rural Development Officers of the Bank's branches so that they can appreciate the distinctions between the Bank and the Foundation. The terms and conditions of the service of workmen employees in banks have been laid down in the Bank Awards subsequently modified by the Bipartite Settlements/Memorandum of Settlements. Many other contentions are taken up in the counter. For these reasons the Second Party Bank "A" has prayed to reject the reference.

29. The case of the Second Party "B" in brief is as under :

30. The main contention of the Foundation is that it was registered on 24-5-1966 as a society under the provisions of Karnataka Societies Registration Act, 1960 with its own Memorandum of Association and Rules and Regulations. The main objective and purpose of the Foundation are to focus the attention of the farmers in the changes taken place in agriculture for modernising the agricultural practices so that the village economy may improve.

31. The Foundation is an independent voluntary organisation having large number of membership from all walks of life and a body corporate with duly elected office bearers and governing Council. It submits audited statements of accounts and balance sheets to the Registrar of Cooperative Societies as per the Societies Registration Act.

32. The Registered Office of the Foundation is situated at Syndicate Bank Building, Manipal and the administration and affairs of the foundation is carried out by its governing council consisting of Members elected by the General Body. The membership consists of 4 classes of members viz. Patron Members, Life Members, Ordinary Members and agricultural members and the total number of members is about 6000. The foundation has established rural development projects in the name of Farm Clinics in tune with its objectives. The main objective of the clinics is to help the selected poor families to improve their socio-economic conditions and to improve the village where it operates.

33. It is the further case of the Second Party "B" that the Farm Clinic project is a time bound project and would run for a period of five years and on completion of the above project period, the clinic will be closed.

34. It is the further case of the Second Party "B" that for running farm clinic, persons are appointed by the Foundation and they are designated as Field Assistant and the Foundation itself takes the decision with regard to selection and appointment and it decides the salary and other service conditions. The persons so appointed would be functioning under the direct instructions and control of the Foundation.

35. It is the further case of the Foundation that it is an independent legal entity by itself. The legal contentions are also raised in para 7 and it is said that the foundation has not been called upon to justify its action in terminating the services of the Field Assistants. Having regard to the above position, the Foundation is not a necessary party for adjudication of the points of dispute that has been referred to this Tribunal and no award is required to be passed in so far as the Foundation is concerned as no relief can be granted against the Foundation.

36. It is the further case of the Second Party "B" that no business activities or industrial activities is carried on by the Foundation as defined under the Industrial Dispute Act and therefore, its activities do not partake the character of an industry as defined under Section 2(j) of the I.D. Act, 1947.

37. It is, the further case of the Second Party "B" that the services of the Field Assistants were engaged on contract basis and they were terminated on the closure of the farm Clinics. The setting up of the Clinics itself being for a specific period. The termination cannot be construed as retrenchment. The allegations made by the union are denied.

38. It is the further case of the Second Party "B" that the understanding of the objects of the Foundation as mentioned in the Claim Statement is totally wrong and misleading the objects of the Foundations are wide ranging and include all the activities which are calculated to bring about improvement in the living and working conditions of farmers and rural people. The objects are also narrated in the Counter.

39. It is the further case of the Foundation that it has been implementing the farm Clinic programme in furtherance of the above objective which are very clearly not the objectives of a banking institution.

40. It is the further case of the Second Party "B" that the Registered Office of the Foundation is situated at the Syndicate Bank Building at Manipal cannot be construed to mean that the Syndicate Bank was directly controlling and managing the farm clinics. The foundation was started in the year 1966 much before the Nationalisation of the major banks in the country. It is not correct to say that the Syndicate Bank founded the foundation for fulfilling the obligations as a Nationalised Bank. The Second Party "B" has given parawise replies.

41. The main contention of the Foundation is that the Field Assistants after working for a period of 3 to 5 years were to be in a position to start their own employment and ventures in their own village. Therefore, there is no merit in this reference. The Second Party management for these reasons and some other reasons has prayed to reject the reference.

42. It is seen from the records that this case is pending since more than 10 years. It is seen from the records that in the instant case, management "A" Syndicate Bank has examined MW1, V. Swevandhar Kumar, Bank Executive and the Management "B" examined N. V. Mallaya, Ex. Officer as MW2. Against this on behalf of the first party union WW1, K. S. Shetty was examined.

43. I have read the evidence carefully. The workmen and the managements have filed voluminous documentary evidence. I have carefully scrutinised all the documents filed by the parties. I have heard both sides at length. The learned counsel for the first party has also given written arguments and Second Party "B" management has also given written brief along with citations relied by them. I have read the Written Arguments of the parties and I have carefully read all the decisions cited by the parties.

44. Before considering the evidence let me first concentrate on the arguments advanced by Shri B.C. Prabhakar, the learned counsel for the Second Party "B" Management.

45. During the course of arguments he was very much particular that this court cannot travel beyond the scope of reference, referred by the competent authority. In order to appreciate his submissions let me reproduce the reference.

"Whether the Syndicate Bank Staff Union is justified in demanding the reinstatement of 263 Field Assistants (list enclosed) employed by the Syndicate Agricultural and Rural Development Foundation (formerly known as Syndicate Agricultural Foundation) by the Syndicate Bank and thereafter regularisation of services by the Syndicate Bank, if so, what relief the workmen are entitled to?"

46. The reference against the Second party Foundation is also not maintainable on the ground that the Second party Foundation is a Voluntary Organisation and is not an Industry as defined under Section 2(j) of the I.D. Act.

47. The reference is also not maintainable on the ground that the Filed Assistants are not the members of the First Party Union. The First Party Union is formed by the Employees of the Syndicate Bank. The Union can take up the cause only in respect of its members and award staff. The witness for the first party has categorically stated that he and other Field Assistants involved in this Reference are not the members of the First Party Union. When such being the case, the First Party Union has no locus-standi to take up the cause of the Field Assistants. On this ground alone, the Reference is liable to be rejected.

48. It was argued by the learned counsel for the Second Party "B" that as per the reference whether Syndicate Bank Staff Union is justified in demanding reinstatement of 263 Field Assistants employed by the Syndicate Agriculture and Rural Foundation by the Syndicate Bank and thereafter regularisation of services. It is clear that there is no relief prayed by the first party union against the Foundation.

49. He further contended that it is an admitted case of the Foundation that they were employed by the Foundation and in view of these facts there is no merit in the reference with a prayer that 263 Field Assistants employed by the Syndicate Agriculture Rural Development Foundation be reinstated by the Syndicate Bank, Second Party "A" Management and thereafter regularisation. I have considered this submissions, and I am of the opinion that he is right.

50. Further the learned counsel for the Section Party "B" management is right in his submissions that this court cannot go beyond the point of dispute.

51. In other words the demand of the union is regarding reinstatement and regularisation of 263 employees by the Syndicate Bank, Second Party "A" management itself is not correct. Admittedly these 263 Field Assistants are not the employees of the Syndicate Bank at all.

52. Now coming to prayer by the Union. In my opinion the prayer does not get support from the order of reference, as submitted by Shri . B.C. Prabhakar, the Learned Counsel appearing for the foundation.

53. The learned counsel for the Second Party "A" management, Mr. Pradeep Saukar has read the counter at length and pointed out that there is no relationship of master and servant between Syndicate Bank and the Employees of Syndicate Bank Agriculture Federation and they have no right in law to raise the Industrial Dispute against the Syndicate Bank. He further contended that the employees of Syndicate Agriculture Foundation which have raised this dispute through its Syndicate Staff Union are not workmen as defined under Section 2(s) of the Industrial Dispute Act and the reference is bad in law. There is merit in the arguments advanced by the learned counsel for the Second Party "A" management.

54. If we strictly peruse para 5 of the Claim Statement of the first party Union it is abundantly clear that the workmen have admitted that they were recruited by the Agriculture Foundation. It is said by the Union that even though the Field Assistants are recruited by the Agriculture Foundation, it is the Syndicate Bank which in fact is the employer of the Field Assistants and some demonstrations were made in support of this contention, but there is no merit in the contentions put forth by Shri Suba Rao, the learned counsel for the first party Union.

55. At the outset I am of the opinion that there is no merit in these contentions because the Field Assistants are recruited by the Foundation and there is no relationship of master and employee between the Syndicate Bank and the workmen of the first party Union.

56. WW1 has given detailed evidence on behalf of the union and has stated various duties of the Field Assistants. WW1 has stated in his cross examination that it is true that all of them were appointed by Second Party, Syndicate Agriculture Foundation. He has also stated in his cross examination that it is true that the foundation gave termination order to them and others saying that the Clinics are closed. He also admits in his cross examination that no Clinic is functioning now.

57. When the Second Party "A" Management cross examined WW1, he has admitted that the Syndicate Bank has not given any appointment order to them and they were appointed by Second Party "B" management.

58. If we consider this evidence of the first party union and the documents, I am of the opinion that there is no merit in the arguments advanced by the

learned counsel for the first party union, Mr. Suba Rao at all.

59. The learned Counsel, Mr. Suba Rao appearing for the first party union advanced very attractive arguments and submitted that there is relationship of master and employee between the Syndicate Bank and the Workmen of the first party Union. He also advanced arguments in detail regarding contract of service and contract for service. It was argued at length by Mr. Suba Rao, the learned counsel for the workmen that in order to know whether there exists relationship of master and employee, we have to see :

- (i) Who has appointed ?
- (ii) Who has Control and Supervision on the Workmen ?
- (iii) Who pays ?
- (iv) Who is the Disciplinary Authority ?
- (v) Who terminated the services ?

60. He further said that whose work is being done. Mr. Suba Rao, the learned counsel for the first party union demonstrated at length the above said points and took me to the various clauses of book "all about farm clinics" and other documents filed by the first party Union.

61. In order to appreciate his arguments we will have to consider the object the Foundation and functioning of the farm Clinics. Admittedly the main object of Farm Clinic is to help selected families of poor people to improve their socio economic position. In view of this I am of the opinion that the foundation is a social institution and the same is registered and it is a trust, as submitted by Shri B. C. Prabhakar, the learned counsel for foundation. In my opinion these facts are not seriously denied. Clause 4 of 'all about farm clinics' is in respect of what is the main object of the farm clinic and Clause 5 is the method adopted by a farm clinic to its objective and Clause 7 is how long a farm will operate in a village.

62. Before proceeding further I may say here that Clause 7 is clear to the effect that a farm clinic does not operate permanently in any village. It will function in a village upto 5 years by which time it is expected that it would be able to help most of the poor families to improve their socio-economic position.

63. Ex. W1 is the document filed by the Union and this document is given by Syndicate Agriculture Foundation informing each workman that they were selected to work as Field Assistant. In view of this I am of the opinion that there is no merit in the argument advanced by the first party union that Syndicate Bank is the master and the Bank has appointed the Field Assistant.

64. Regarding control and supervision, we have to consider many aspects and not favourable to parties.

65. It was vehemently argued by the learned counsel for the foundation that no full control was with the bank. There was no full supervision by the Bank. He further contended that supervision is not the whole test and for social cause, if the foundation involved

the Syndicate Bank for operating limited purpose, it cannot be said that the Field Assistants are the employees of the Bank. There is merit in this argument.

66. In support of this arguments, the learned counsel appearing for the Foundation, Shri B. C. Prabhakar relied decision reported in 1976(1)LLJ 238 between the New Textiles Vs. Union of India. I have read the above decision carefully.

67. According to this decision the important factors to be considered are :

- (a) the master's power of selection of his servant.
- (b) the payment of wages or other remuneration,
- (c) the master's right to control the method of doing his work, and
- (d) the master's right of suspension or dismissal.

68. It is further held that the control is obviously an important factor and in many cases it may still be decisive factor. It is now no more than a factor, although an important one. The question is not whether in practice the work was in fact done subject to a direction and control exercised by an actual supervision or whether an actual supervision was possible but whether ultimate authority over the man in the performance of his work resided in the employer so that he was subject to the latter's order and directions.

69. In the above decision it is also held that recently the SC had to consider in AIR 1974 SC 37, the definition of the term "person employed" in S. 2(14) of Andhra Pradesh (Telengana Area) Shops and Establishments Act, 1951 some other authorities are also referred in the above decision. In Cassidy Vs. Ministry of Health (195) 1 All E.R. 574 at Page 579, Lord Justice Sommerwell pointed out that the test control of the matter of work is not universally correct that there are many contracts of service where the master cannot control, the manner in which the work is to be done as in the case of a captain of a ship. In Many skilled employment, to apply the test of control over the manner of work for deciding the question whether the relationship of master and servant exists would be unrealistic.

70. I have read the above decision very carefully and I am of the opinion that in the instant case in view of the document Ex. W1, the foundation has appointed the Field Assistants and it has terminated them. The documents filed by the union are sufficient to say that the foundation has terminated the Field Assistants and one such document is the document No. 104 filed by the first party workmen. There is not an iota of material before us so as to say that the disciplinary authority is the Syndicate Bank. MW1 and MW2 on behalf of the management A and B have given detailed evidence explaining all these facts.

71. Mr. Suba Rao the learned counsel for the first party workmen for the reason best known to him has not read clause 24 of "all about Farm Clinics" though he took me to all the clauses word by word.

72. Clause 24 reads as under :

The position of Field Assistant is purely temporary. This is because, the Farm Clinic itself will operate in any village for a period of about 5 years. The intention of Syndicate Agriculture Foundation is not to provide employment to the Field Assistants but to give them an opportunity to involve in the development work in their own villages, so that they can develop their skills and self confidence. After working for a period of 3-5 years the Field Assistant should be in a position to start their own self employment ventures in their own villages. The knowledge and experience gained by them by working as Field Assistants will stand them in good stead while running their business.

73. On plain reading of this clause 24, the position of Field Assistants is purely temporary. It was for a period of 5 years and the intention of the foundation is not to provide employment to the field assistants but to give them an opportunity to involve in the development works in their own villages so that they can develop and after working for a period of 3-5 years to start their own employment in their own villages and the knowledge and experience gained by them as Field Assistants will stand them in good stead while running their business. From this I have no hesitation to say that the reference for reinstatement and regularisation by the bank has no merit at all

74. Regarding control and supervision there was an arrangement between the foundation and the Syndicate Bank. We have many documents to say that the Syndicate Bank along with other banks and many organisations have given funds to the Foundation. The foundation was functioning in the building of the Bank because the bank officers were giving training as to how the farm clinics should function.

75. In the instant case the supervision and control is not the full test to agree with Mr. Suba Rao, the learned counsel for the first party workmen that the Bank had control and Supervision.

76. I have already said that according to Ex. W1 the bank has not selected the Field Assistants, and as per the documents filed by the workmen, the bank has not terminated their services.

77. Much was argued about who pays and it was submitted that the bank pays the salary to the Field Assistants.

78. On behalf of the management, both the counsels have demonstrated at length and submitted that it was only an arrangement as to how to pay the wages and it was further submitted that wages were paid only by the Foundation through the Syndicate Bank and there are separate balance sheet of the Foundation. They are right in their submissions.

79. I have considered the entire material at length and I am of the opinion that there is no merit in the arguments of the workmen that the bank was paying the wages.

80. I have already said that there is not an iota of material to say that the bank was the controlling authority of the Field Assistants. It was argued by the

learned counsel for the workmen that the bank was the disciplinary authority and it has terminated the services. But in view of the documents filed by the workmen themselves there is no merit in this arguments because the foundation has terminated the services of field Assistants.

81. In the balance sheet of the foundation, salary account is separately shown in the name of the foundation. It is true that after receiving lump-sum amount from the bank, the Syndicate Agriculture Foundation has paid salary by depositing wages in the name of individual Field Assistant who had their accounts in the bank. This was only an arrangement between the Bank and Foundation for paying wages. If you read carefully "all about Farm Clinics" we find direct answer as to whose work was being done. It was the work of the foundation that was done by these Field Assistants.

82. The learned counsel appearing for the first party union workmen relied following decisions :—

- (1) 1973 LLJ 495
- (2) 2000 (5) SCW. 477
- (3) 200(1)LLJ 1618
- (4) AIR 1974 SC 37,
- (5) 1957 1LLJ 477
- (6) 1995 1 LLJ 196
- (7) 1974 1 LLJ 367
- (8) 1955 1 LLJ 688

83. I have read all the decisions very carefully and considered the effective parts referred by the workmen in the above decisions. The learned counsel appearing for the workmen has relied above decisions and demonstrated 4 points namely :

- (a) who has appointed.
- (b) Who has control and supervision
- (c) Who is the disciplinary authority
- (d) Who pays wages and whose work is being done.

84. In this context I have read all the decisions carefully but the facts of the case on hand are quite different from the facts of the above decisions.

85. Further there is no merit in the arguments of Shri Suba Rao, the learned counsel for first party workmen because the appointments are made by the Foundation. So far as termination is concerned there is a document filed by the workmen and these documents are sufficient to say that the Field Assistants were recruited by the foundation and they were terminated by the foundation and the Syndicate Bank has not done anything and there is no relationship of master and employee at all.

86. I have also said that there is not an iota of material before us to establish that the 'Syndicate Bank was the disciplinary authority of the Field Assistants. I have also considered the method of paying wages and I have said that the Field Assistants were doing the work of Foundation and not the bank.

87. Considering all these aspects in detail with the various clauses "all about Farm Clinics" I have no hesitation to say that this reference has no merit and this court cannot go beyond the scope of the reference and the decisions relied by the learned counsel for the first party Union Workmen are not applicable to the facts of the case on hand.

88. I have considered the evidence of MW1 and MW2 and WW1 carefully.

89. It was vehemently argued by the learned counsel for the first party Union Workmen that the basic rights are denied and there is no accountability in the country. The workmen are suffering and the preamble of our constitution is not achieved and the Syndicate Bank has exploited these Filed Assistant.

90. To accept all his submissions the workmen must establish that the Syndicate Bank appointed them and terminated them and the Syndicate Bank has adopted unfair labour practice and there is victimisation.

91. In the instant case the Field Assistants are not appointed by the Syndicate Bank and therefore, the question of considering all this does not arrive at all.

92. I have given my best consideration to the evidence, documents and arguments of both sides at length and I am of the opinion that this reference has no merit. Accordingly I proceed to pass the following order.

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 17th July 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का. आ. 2182.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अन्तर्गत केन्द्रिय सरकार बैंक ऑफ बड़ोदा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रिय सरकार को 31-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/181/95-आईआर (बी-II)]

सी. गंगाधरण, प्रवर सचिव

New Delhi, the 31st July, 2001

S.O. 2182.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their work-

man, which was received by the Central Government on 31-7-2001.

[No. L-12012/181,95-IR (B-II)]
C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 26th July, 2001

PRESENT :

K. KARTHIKEYAN,
Presiding Officer.

Industrial Dispute No. 415/2001
(Tamil Nadu State Industrial Tribunal I.D.
No. 111/96)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri T. Muthu and the Management of Bank of Baroda, Chennai.)

BETWEEN

The General Secretary, : I Party/Claimant
Bank of Baroda Workers Union,
Madras.

AND

The Regional Manager, : II Party/Management
Bank of Baroda, Chennai.

APPEARANCE :

For the Workman : M/s. Aiyar & Dolia,
C. R. Chandrasekaran, Advocates

For the Management : Sri K.S.V. Prasad, Advocate
The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-12012/181/95-IR(B.II) dated 26-11-96.

This reference has been made earlier to the Tamil Nadu Industrial Tribunal, where it was taken on file as I.D. No. 111/96. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 415/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 23-2-2001 with their respective parties. On receipt of notice from this Tribunal, the counsel on record on either side were present alongwith their respective parties and prosecuted this case further.

This matter came up before me for final hearing on 15-06-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on

record, upon perusing the documentary evidence let in on either side and upon hearing the arguments advanced by the learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Bank of Baroda, Madras in refixing the pay of Shri T. Muthu on his promotion as Clerk by excluding washing allowance is justified? If not, to what relief, he is entitled?”

2. The averments in the Claim Statement are briefly as follows :—

The I Party/Claimant Bank of Baroda Workmen Union represented by its General Secretary is espousing the cause of the concerned workman Sri T. Muthu, a member of the union by raising this industrial dispute. The I Party/Union (hereinafter referred to as Petitioner) submits that one of its Members Sri T. Muthu was promoted from subordinate cadre to clerical cadre on 28-8-91. His basic pay was fixed at Rs. 1,500/- in clerical cadre. On 1st December, 1994, the II Party/Bank of Baroda Management advised the concerned workman that fixation of pay accorded to him, consequent upon his promotion from subordinate cadre to clerical cadre was not in order and that consequently, the fixation as on 28-8-91 was to be at Rs. 1,400 from 28-08-91. In the same letter dated 1-12-94, it is stated that the Respondent were making recovery for the excess payment. The concerned workman was not advised of how the fitment was done in 1991. He had accepted fitment in good faith and depending on their bonafides. Hence, he made a representation not to refix him reducing his basic pay from Rs. 1,500/- to Rs. 1,400/- as from 28-08-1991 and not to recover as well the alleged excess payment with effect from 28-8-91. He also represented that he would be put to irreparable loss financially and mental agony due to no fault of his. The Petitioner Union made a representation to the Management that along with Mr. T. Muthu, five others also were promoted in the city of Madras. similarly, in 1991 i.e. 28-08-91 and that their basic pay was not revise down as it was sought to be done on Mr. T. Muthu. Among other things, the Petitioner Union represented to the Respondent bank that refixing the basic pay to the prejudice of Mr. Muthu unilaterally even without putting him on notice and inflicting on him the injury was not tenable. More so, to ask an employee to refund the amount supposed to have been paid to him in excess for over a period of three years is unwarranted and would cause the employee unavoidable hardship and agony. There was a Memorandum of Settlement dated 3rd October, 1978 between the Respondent Bank and the Federation to which the Claimant Union is affiliated. According to the Memorandum of Settlement the washing allowance which is an allowance of permanent nature should be reckoned with for the purpose of fitment. The reason given by the Respondent bank for reducing the basic pay of Mr. Muthu from Rs. 1500/- to

Rs. 1400/- is that it was administrative mistake and it was to be corrected. But no mistake has been committed by Respondent/Bank in respect of five other employees in sub-staff cadre, who have been promoted to clerical cadre in 1991 along with Sri T. Muthu. Similar treatment was treated out to every one including Mr. Muthu, while fixing the basic pay of Mr. Muthu. The washing allowance was taken into account in respect of other five promotees also for their fitment. The literal application of any settlement will prejudice an employee on occasions. The Respondent/Bank is correct in having fixed the basic pay in clerical cadre of Sri T. Muthu at Rs. 1500/- reckoning the washing allowance of Rs. 33/- because it is a permanent allowance in the subordinate cadre as otherwise Rs. 65 would not have been ensured according to the aforesaid Settlement. Any settlement has to be read down with the spirit thereof. In any event, it is not open to the Respondent/Bank to recover the alleged excess paid to him for about three years due to the alleged mistake committed by them in fixing the basic pay of Rs. 1500/- instead of Rs. 1400/-. Such a recovery is not permissible in law. This move on the part of the bank is hostile and arbitrary. Hence, this Tribunal may be pleased to hold that the action of the Management of Bank of Baroda, Madras, in refixing the pay of Sri T. Muthu on his promotion to clerical cadre by excluding washing allowance as not justified and direct the Respondent/Bank to restore to Mr. Muthu the fitment of Rs. 1500/- originally given to him by the Respondent/Bank in the scale of pay of clerical cadre.

3. The averments in the Counter Statement of the II Party Management/Bank are briefly as follows :—

The concerned workman Sri T. Muthu, whose cause is espoused by the Petitioner Union under this industrial dispute and other five subordinate cadre workmen were promoted to clerical cadre on 28-8-1991. Sri T. Muthu was fitted on promotion at the basic pay of Rs. 1500/- in clerical cadre. At that time, the terms of Memorandum of Settlement dated 3-10-78 were followed for calculating his total emoluments, which need to be protected. While doing so, the sum of Rs. 25/- paid towards washing allowance was also taken into account in advertently. The branch always inform the employee concern when implement it. The fixation of pay for clerks, who have been promoted from subordinate cadre is governed in terms of Memorandum of Settlement dated 3-10-1978 between the Respondent/Bank and All Indian Bank of Baroda Federation to which the Claimant is affiliated. The operative portion reads that "it is every that the basic salary of a member of the subordinate staff on promotion as clerk would be fixed in clerical scale of pay at that stage that would give him a raise of minimum Rs. 65/- in his total emoluments as subordinate staff on the date immediately preceding his date of promotion as Clerk. The total emoluments as a member of the subordinate staff for this purpose would mean basic salary, dearness allowance, house rent allowance, if any, city compensatory allowance, if any, and special allowance, if any. In terms of the settlement, Mr. T. Muthu was to receive a raise of Rs. 65/- and accordingly, fitted in the basic pay of Rs. 1,400/- in clerical

cadre with protection to emoluments received by him. While according fixation to Mr. Muthu upon his promotion in 1991 washing allowance was taken into account and he was given fitment in the higher basic pay for which he was not entitled as washing allowance should not be taken into account. The fixation for other staff members was also worked out in 1991 taking into account the washing allowance. However, on refixation after revision, there was no change in the basic pay of these staff members as the raise of minimum of Rs. 65/- was maintained even after removing washing allowance from the fixation. So no anomaly exists with regard to fixation of pay in so far as the other five promotees are concerned. The washing allowance was not taken into account in their present fixation. Hence, the basic pay of the other promotee clerks of his batch were not received down wards. The washing allowance need not be reckoned for fixation of pay even according to the Memorandum of Settlement dated 3-10-1978. An employee should be paid what he is due and the Respondent reserves the right to recover the excess payment made, if any. There is nothing wrong or illegal in rectifying the fixation made incorrectly and recovering the amount paid in excess of what is legitimately due to Mr. Muthu. It is incorrect to contend that it is not open to the Respondent/Bank to recover the excess paid to him or that such recovery is not permissible in law. This recovery is neither hostile nor arbitrary. The fixation accorded to Sri T. Muthu and others in terms of Settlement dated 3-10-1978 signed by the Unions to which the Claimant belongs is in order. In any case of dispute, parent organization of the said Union which is a signatory to the Settlement should approach the Bank in terms of para 14.1 of Settlement dated 3-10-1978. If the Union was of the opinion that washing allowance was a permanent allowance in subordinate cadre, it should have taken up the issue with the bank at the time of signing the Settlement dated 10-01-96, which it did not and hence it is estopped from raising the said issue now. Therefore, the action on the part of the Bank Management on having accorded revised fixation is correct and the industrial dispute is to be dismissed.

4. When the matter came up before me for final hearing with the consent given by the counsel on either side, documents were marked as exhibits W1 to W7 and M1 and M2. No witness has been examined on either side. The learned counsel on either side have advanced their arguments.

5. The point for my consideration is —

"Whether the action of the Management of Bank of Baroda, Madras in refixing the pay of Sri T. Muthu on his promotion as Clerk by excluding washing allowance is justified? If not, to what relief, he is entitled?"

Point :—

This dispute is with regard to fixation of pay of the workman Sri T. Muthu on his promotion as Clerk. It is admitted that the concerned workman along with five others were promoted from subordinate cadre to clerical cadre on 28-8-1991. It is not disputed that while fixing the pay in clerical cadre for a workman

who is promoted from subordinate cadre to clerical cadre, the terms of Memorandum of Settlement dated 3-10-1978 were to be followed. Ex. M1 is the xerox copy of Memorandum of Settlement dated 3-10-78. Under that Settlement Clause 11.1 reads as follows :

"It is agreed that the basic salary of a member of the subordinate staff on promotion as Clerk would be fixed in the clerical scale of pay at that stage, that would give him a raise of minimum Rs. 65 in his total emoluments as subordinate staff on the date immediately preceding the date of his promotion as Clerk. The total emoluments as a member of the subordinate staff for this purpose would mean a sum of basic salary, dearness allowance, house rent allowance if any, city compensatory allowance, if any and special allowance if any."

The total emoluments governed by the concerned workman Sri T. Muthu as subordinate staff on the date immediately preceding the date of his promotion as Clerk is as follows :—

	Rs.
Basic Pay	1,240
Dearness Allowance :	929
House Rent Allowance :	163
City Compensatory Allowance :	75
Special Allowance :	119

Total emoluments Rs. 2,526

Add : Rs. Sixty five in terms of Settlement Rs. 65

Salary to be protected Rs. 2,591

On 28-8-1991 five other subordinate staff were also promoted along with Sri T. Muthu in clerical cadre. It is the contention of the Respondent/Management that while according fixation to Sri T. Muthu upon his promotion in 1991 washing allowance was taken into account and he was given fitment in the higher basic pay for which he was not entitled as washing allowance should not be taken into account and that the fixation for other staff members also worked out in 1991 taking into account the washing allowance. There was no change in the basic pay of these staff members as a raise of minimum of Rs. 65 was maintained even after removing washing allowance from the fixation. So no anomaly exists with regard to the fixation of pay in so far as the other five promotees are concerned. Washing allowance was not taken into account in their present fixation. This is clearly seen from Ex. W7, the table showing the fitment worked out for others. From the tabular column, it is seen that the total emoluments drawn by those other five promotees, when a minimum raise of Rs. 65 added to it comes to a lesser amount than the total emoluments arrived at for them by fixing their basic pay in the fitment accorded. It is above the total amount. Even when adding Rs. 33 washing allowance that total amount in the fitment accorded is protected. Here in the case of Sri Muthu fixing up his basic pay as Rs. 1400 at the time of his promotion to clerical scale comes to Rs. 2,616 as total

emolument, as shown in para 4 of the Counter Statement. The break up figure for the total emoluments shown in that Table as basic pay Rs. 1400 dearness allowance Rs. 957, house rent allowance Rs. 168 city compensatory allowance Rs. 91. Thus the total emoluments for Sri Muthu on promotion as Clerk by fixing his basic pay at Rs. 1400 is above the amount he drawn in the subordinate staff cadre total emoluments by adding Rs. 65 as per the terms of the Settlement. The amount of salary received by Muthu in subordinate cadre is Rs. 2526 as total emoluments and if Rs. 65 is added to it in terms of Settlement the total salary i.e. to be protected on his promotion to clerical cadre is Rs. 2,591. So, without adding the washing allowance of Rs. 33, the emoluments he gets by fixing his basic pay Rs. 1400 is Rs. 2,616. Thus, on promotion to the clerical cadre his salary has been protected. But, the fitment accorded to him in August, 1991 by fixing up his basic pay at clerical scale of Rs. 1500 he got a total emolument of Rs. 2,802, which is more and above than fixing up his basic pay at Rs. 1400 and thereby he receives a total emolument of Rs. 2,616 which itself a protected amount of his salary received in subordinate cadre with an addition of Rs. 65 as per the terms of the Settlement. So, from this it is seen that the fixation made in 1991 to Sri Muthu on his promotion from subordinate cadre to clerical cadre by fixing up his basic pay as Rs. 1500 instead of Rs. 1400 is incorrect fixation as stated in the Counter of the Respondent. What that has fixed incorrectly by the Respondent/Management as the pay of the concerned workman Sri T. Muthu at the time of his promotion from the subordinate cadre to clerical cadre cannot be taken an advantage of by the Claimant Union. Therefore, there is nothing wrong or illegal for the Respondent in rectifying the fixation made incorrectly and recovering the amount paid in excess of what is legitimately due to Mr. Muthu. That recovery cannot be considered as hostile or arbitrary. In the Clause 11.1 of the Settlement dated 3-10-78, it is not stated that washing allowance also to be taken into consideration. In that clause there is a mention of special allowance only. Special Allowance does not include washing allowance. Further in the referred dispute, the question to be adjudicated is not stated as to whether the action of the Management in ordering recovery of amount paid in excess of what it is legitimately due to Sri Muthu is justified or not? So, the action of the Management by correcting the mistake in the fixation of pay at a later point of time and to order recovery of the excess amount paid from the concerned workman cannot said to be a recovery not permissible in law. By taking steps for recovery of the excess amount paid to the concerned workman, his legitimate due to the salary in his clerical cadre has not at all been reduced by the Management. So under such circumstances, it can be held that the action of the Management of Bank of Baroda Madras in refixing the pay of Sri T. Muthu on his promotion as Clerk by excluding washing allowance is justified. Consequently, that concerned workman is not entitled to relief prayed requesting the Tribunal to give a direction to the Respondent/Bank to restore to him the fitment at Rs. 1,500 originally given to him by the bank in the scale of pay of clerical cadre. Thus I answer the point accordingly.

6. In the result, an award is passed holding that the action of the Management of Bank of Baroda, Madras in refixing the pay of Sri T. Muthu on his promotion as a Clerk by excluding washing allowance is justified. The concerned workman is not entitled to any relief. No cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th July, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:

On either side . None.

DOCUMENTS MARKED.

For I Party|Workman :

Ex.	No.	Date	Description
W1	19-12-94		Xerox copy of letter from the Management to the Petitioner regarding fixation of pay.
W2	20-12-94		Xerox copy of letter from the Petitioner to the Management regarding fixation of pay.
W3	30-12-94		Claimant Union raising the dispute before The Assistant Labour Commissioner (Central) (Xerox copy).
W4	23-1-95		Xerox copy of reply statement by the Management to Assistant Labour Commissioner (Central).
W5	9-2-95		Xerox copy of rejoinder by the Claimant Union before Assistant Labour Commissioner (Central).
W6	23-2-95		Xerox copy of letter from the Claimant Union to Assistant Labour Commissioner (Central).
W7	Nil		Xerox copy of fitment worked out for others.

For the II Party|Management :

M1	3-10-78		Xerox copy of Memorandum of Settlement.
M2	10-1-96		Xerox copy of Memorandum of Settlement.

नई दिल्ली, 31 जुलाई, 2001

का. अा 2183—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मैनेजर, मद्रास टेलीफोन्स के प्रबन्धन के संबंध निोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[स. एल-40012/25/97—आई आर (डी यू)]

[स. एल-40012/20/97—आई आर (डी यू)]

[स. एल-40012/22/97—आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2183.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Chennai, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief General Manager, Madras Telephones and their workman, which was received by the Central Government on 31-7-2001.

[No. L-40012/25/97-IR(DU),

No. L-40012/20/97-IR(DU),

No. L-40012/22/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 27th June, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute Nos. 488, 489 & 490/2001

(Tamil Nadu State Industrial Tribunal I.D. Nos. 57, 58 & 59/98)

(In the matter of dispute for adjudication under section 10(1)(d) and sub-section 2A of Industrial Disputes Act, 1947 between Workmen S/Sri M. Selvaraj, A. Subramaniam and K. Muthuveeran and the Management, the Chief General Manager, Madras Telephones, Madras.)

BETWEEN

1. Sri M. Selvaraj—I.D. No. 488/2001

2. Sri A. Subramaniam—I.D. No. 489/2001

3. Sri K. Muthuveeran—I.D. No. 490/2001

—I Party/Workmen.

AND

The Chief General Manager,
Madras Telephones,
Madras.

—II Party/Management

APPEARANCE :

For the Workmen—Sri G. Ramachandran (ID 490/2001), Sri R. Ganesan (ID 488 & 489/2001), Advocates.

For the Management—Sri S. Srinivasan, Addl. CGSC.

All these three cases came up before this Tribunal for final hearing on 31-5-2001. On pursuing the Claim Statements, Counter Statements and the documents filed on either side and all the material papers connected with these cases and upon hearing the arguments advanced by the learned counsel on either

side, and these cases having stood over for my consideration till this date, this Tribunal passed the following :—

COMMON AWARD

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section 1 and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, (14 of 1947), have referred the following disputes for adjudication vide Orders No. L-40012/25/97-IR(BU) dated 3-3-98, L-40012/20/97-IR(BU) dated 3-3-98 and L-40012/22/97-IR(BU) dated 3-3-98 :—

THE COMMON SCHEDULE

“Whether the action of the Chief General Manager, Madras Telephones, in terminating the Services of S/Shri M. Selvaraj, A. Subramaniam and K. Muthuveeran, casual mazdoors with effect from 3-1-1995, 2-1-1995 and 31-10-1991 respectively is justified? If not, to what relief these workmen are entitled?”

These references have been made earlier to the Tamil Nadu State Industrial Tribunal, where they were taken on file as I.D. Nos. 57, 58 and 59/1998 respectively. Both the parties in these disputes entered appearance through their respective counsel and have filed their respective Claim Statements and Counter Statements in that Tribunal itself. When the matter was taken up for enquiry by that Tribunal the I Party/Petitioner/Workmen in I.D. No. 488/2001 Sri N. Selvaraj was examined as WW1 and exhibits W1 to W5 were marked by consent of counsel on either side. The II Party/Management/Respondent's documents were marked as Ex. M1 to M4. In I.D. No. 489/2001 (I.D. No. 58/98) documents on either side were marked by the consent of counsel on either side as Ex. W1 to W4 and M1 to M4. In I.D. No. 490/2001 (I.D. No. 59/98) documents were marked by the consent of counsel on either side here in this Tribunal as Ex. W1 and W2 and M1 to M5. When the matter was pending enquiry, as per the orders of the Central Government these cases were transferred to the file of this Tribunal for further adjudication. On receipt of records from the Tamil Nadu State Industrial Tribunal, these three cases were taken on file as I.D. Nos. 488, 489 and 490/2001 respectively. On receipt of notice from this Tribunal, both the parties and the counsel on either side appeared and prosecuted these cases further. Since the subject matter of the industrial disputes in all these three cases as a common one the counsel on either side have informed this Tribunal that they want to have a common enquiry for all the three disputes. The counsel on either side have advanced their respective arguments.

2. The common case in these industrial disputes is briefly as follows :—

The Petitioners I Party/Workmen were employed as casual mazdoors under the II Party/Management, the Respondent in these cases, prior to 31-3-1985. The workman Sri Selvaraj was employed as such for 30 days in July, 29 days in August, 29 days in Sep-

tember and 23 days in October, 1984. The petitioner Sri A. Subramaniam was engaged as casual mazdoor for 31 days in May and 30 days in June, 1984. The Petitioner Sri Muthuveeran had worked from 1985 onwards as a casual mazdoor and on every year he worked for more than 260 days in 1989 he worked for 311 days. So all these Petitioners are entitled to be permanently absorbed in regular vacancy. The Petitioner Sri Selvaraj and the other petitioner Sri A. Subramaniam were not engaged by the Respondent, after October, 1984 and June, 1984 respectively, due to administrative reasons and subsequently the Petitioners were directed to appear before the Respondent/Management and were given work as casual mazdoor. The casual labourers from 1991 onwards in the case of Sri Selvaraj and March, 1992 onwards in the case of Sri M. Subramaniam, the Petitioner K. Muthuveeran was subsequently employed by the Respondent as casual labour from August, 1991. After June, 1993 these petitioners were not engaged by the Respondent/Management. Since these workmen have worked more than 240 days prior to 31-3-1985 and subsequently from the year 1992 to 1993 and their services cannot be terminated without any notice or compensation. Since these Petitioners have satisfied the norms of the department, they should have been confirmed. Further these Petitioners are entitled to be made permanent, since they were engaged prior to 31-3-1985 and were worked more than 240 days of service continuously in a year. The termination of services of these petitioners amount to retrenchment and violative of Section 25F of the Industrial Disputes Act. Hence, these Petitioners may be reinstated in service by the Respondent/Management with continuity of service and back wages. It is the further contention of the Petitioner Sri K. Muthuveeran that by a letter dated 30-3-1985, the Telephone Department had issued instructions to stop fresh recruitment and to engaged the casual labourers who were already served in the department by giving them temporary status. In that letter under Clause 5, it is stated that temporary status would be conferred on all the casual labourers currently employed and who have rendered continuous service of at least one year out of which they must have been engaged for the period of 240 days and that such conferment of temporary status would be without reference to the creation/availability of regular Group D posts.

3. The common averment in the Counter Statements of the Respondent are briefly as follows :—

The petitioners have engaged as casual labourers till 1984 after a long break of seven years they were re-engaged in October, 1991 and continued to work as casual labourers, whenever work was available from October, 1991 to June, 1993. To re-engage casual labourers they have to satisfy the conditions such as that they should have been initially engaged prior to 31-3-1985 that they should have worked at least a minimum of 180 days. All the eligible casual labourers were directed to enroll in the Headquarters office i.e. Staff Relation Section before 15-9-92. The petitioner have failed to enroll themselves and thus had shown no interest in regularising their job. After verification from the headquarters, it has found that the petitioners have not enrolled as directed and hence, action were contemplated to stop

them from work as per departmental rules. There was intense pressure from Class IV Union resulting in Dharna in front of the chamber of Divisional Engineer, Anna Nagar in July, 1993. Therefore, under duress and to ease the situation, the petitioners were asked to work as contingent employee and payment were made through ACG 17. Thus they were continued in this manner and were offered work till 2-1-1995. Then pursuant to the Chief General Manager's direction they were stopped from work. A comprehensive scheme was framed by the Department of Telecommunication on 7-11-1989 for grant of temporary status to those casual labourers engaged on 30-3-1985. The Scheme would not apply to those engaged after 30-3-1985. By a subsequent letter dated 17-12-1993, the date was extended upto 22-6-88. Therefore, the persons engaged prior to 22-6-1988 and who continued to work on the date of the scheme namely 7-11-1989 would also be considered for grant of temporary status. Another order dated 21-10-92 issued by the Department of Telecommunication, New Delhi provides that date in service upto six months could be considered by Divisional Engineers in certain circumstances and breaks upto one year by the Chief General Manager under certain circumstances. The breaks exceeding one year should not be condoned by any authority. Applying these directives, it was seen that the petitioners though engaged prior to 30-3-85 was re-engaged after a break of more than seven years were re-engaged only in October, 1991. Therefore, the re-engagement in October, 1991 was in violation of the Department of Telecommunication's guidelines. Since the Petitioner did not avail the opportunity given for regularisation the termination of his engagement is not illegal. As of now there is no work to accommodate the applicant, hence there are more than 300 persons all casual labourers already employed on muster roll satisfying all the stipulated conditions of the department and satisfying the scheme for granting temporary status are waiting for regularisation. There is no work available in accommodate the petitioners. Hence, the petitions may be dismissed.

4. The common point for my consideration in these three industrial disputes is "whether the action of the Chief General Manager, Madras telephones in terminating the services of the Petitioners as casual mazdoors with effect from 3-1-1995, 2-1-1995 and 31-10-1991 respectively is justified? If not, to what relief the concerned workmen are entitled?"

5. Point.—It is not disputed that the Petitioner Sri M. Selvaraj, A. Subramaniam were engaged as casual labourers prior to 31-3-1985. The averment of these two petitioners in their respective claim statements that the Petitioner Sri Selvaraj was engaged for 140 days in the year 1984 and the Petitioner Sri Subramaniam was engaged for 61 days in 1984 and both of them were re-engaged by the Respondent/Department from April, 1992 to June, 1993. It is not disputed that these petitioners have failed to enroll themselves with the Headquarters as eligible casual labourers for consideration for grant of temporary status. Further, from the materials available in this cases both oral and documentary evidence, it is seen that there was a long break between their initial engagement as casual labourers and their re-engagement in the department of about seven years and they were

disengaged as casual labourers from June, 1993 is only in accordance with the directives of the Department of Telecommunications, New Delhi and their re-engagement in October, 1991 by the department was in violation of the Department of Telecommunications, New Delhi's guidelines. Further the averment of the Respondent/Management in their Counter Statement that the Petitioners did not avail the opportunity given for regularisation has not been disputed as incorrect. So, under such circumstances, the Respondent/Management applying the directives of Department of Telecommunication, New Delhi in non-engaging these Petitioners after June, 1993 cannot be considered as an illegal action. So, the non-engagement of the Petitioner Sri A. Subramaniam and Sri M. Selvaraj as casual mazdoors with effect from 2-1-95 and 3-1-95 respectively as an action taken by the Management cannot said to be unjustified. So far as the Petitioner Sri K. Muthuveeran is concerned he was engaged as a casual labour initially from 1985 to 1991, from Ex. W2 it is seen that this Petitioner along with four others were issued an order by the Respondent/Management dated 30-11-89 stating that their names were struck off from the Muster Roll from 1-12-89 since they were recruited as casual labourers after 31-3-1985. From the materials it is seen that one such action has been taken by the Respd. Management is only as per the direction of Department of Telecommunication, New Delhi. From the particulars available in Ex. W4 and W5, it is seen that what it is mentioned under Exhibit W2 and W3 order are correct. The other documents filed by this Petitioner are only about his re-engagement by the department as a casual labourer subsequent to 31-3-1985. So, they are all only in violation of the directives of the Department of Telecommunication, New Delhi. Even while deciding the petition by this Petitioner, as O.A. No. 877/95, the Central Administrative Tribunal, Madras Bench has held that 'the regularisation rules for the scheme would be applicable to the persons who are presently engaged and to whom no temporary status has been conferred'. There is an observation in the order itself by the Central Administrative Tribunal that 'the petitioner was last engaged only in 1989 and thereafter for six years he had not been engaged and in this situation the applicant cannot claim either re-engagement or conferment of temporary status or regularisation on the basis of any rule or regularisation of Scheme. So, under such circumstances, it is seen that the action of the Management, the Respondent herein in disengaging this Petitioner Sri Muthuveeran as a casual mazdoor w.e.f. 31-10-91 is justified.

5. From the materials available in these cases, it is seen that the non-engagement of these three petitioners after a particular date does not amount to termination of service. It is not the case of the petitioner that they were ever treated as casual mazdoors conferred temporary status or they were given employment temporarily in a permanent post. So, the question of termination of service does not arise in these cases. Under such circumstances, it is not difficult to hold that the non-engagement of these Petitioners by the Respondent Telecom Department as casual labourers from the concerned dates cannot be considered as an unjustified action taken by the Respondent/Management against these three petitioners.

6. The learned counsel for the Petitioner while concluding their arguments neither requested this Tribunal that in view of the averment in the Counter Statement of the Respondent/Management that the Petitioner cannot be absorbed for any work for want of work and there are more than 300 persons all casual labourers already employed on muster roll who satisfied all the stipulated conditions of the department for granting temporary status or waiting for regularisation at least these Petitioners may be ordered to be included in that waiting list subsequent to the persons already mentioned in the waiting lists of the department for casual labourers regularisation. From the materials available in these cases, it is seen that these Petitioners were re-engaged as casual labourers by the Telecom Department which was later found to be a violation of the directives of the Department of Telecommunications, New Delhi. The mistake committed by the authorities in the department should not stand in the way of the Petitioner being included in the waiting list since they have also put in service in the department as casual labourers for the considerable period. So under such circumstances, I am of the opinion that it is justifiable to direct the Respondent/Department to include the names of the three Petitioners also in the Waiting List along with those persons already mentioned therein and thereby enabling these Petitioners to take their chance of getting the job in the Respondent/Telecom Department as and when the work available at the time their right to absorb for that post is accrued. Thus, I answer the point accordingly.

7. In the result, a common order is passed by passing an award holding that the action of the Chief General Manager, Madras Telephones (in terminating the services of) in non-employment the Petitioner Sri M. Selvaraj w.e.f. 3-1-1995, the Petitioner Sri A. Subramaniam with effect from 2-1-1995 and the Petitioner Sri K. Muthuveeran with effect from 31-10-1991 as casual mazdoor is justified. The II Party/Respondent/Management shall include the names of these Petitioners in the list of people wait listed for regularisation, provided, they satisfy all the stipulated conditions of the Respondent/Department and satisfy the Scheme for granting temporary status. No Cost.

(Dictated to the Stenographer, transcribed by him and corrected and pronounced by me in the open court on this day the 27th June, 2001).

K. KARTHIKEYAN, Presiding Officer
I.D. No. 488/2001

Witnesses Examined :

For I Party/Workman : WW1 Shri M. Selvaraj

For II Party/Management : None

Documents Marked :

For the I Party/Workman :

Ex.No. Date Description

W1 16-04-91 Xerox copy of service particulars of the Petitioner by the Management.

W2 20-06-91 Xerox copy of appointment order of the Petitioner by the Management.

W3 05-07-93 Xerox copy of working days details issued by the Assistant Engineer (Phones) to the Asstt. Engineer Staff Relations.

W4 31-03-95 Xerox copy of certificate issued by the Sub Divisional Engineer (Phones) to the Petitioner.

W5 06-03-96 Copy of judgement of the Central Administrative Tribunal, Madras Bench in O.A. No. 350/95.

For the II Party/Management :

Ex.No. Date Description

M1 30-03-85 Xerox copy of letter No. 270/6/84-STN regarding casual labour engagement.

M2 07-11-89 Xerox copy of circular No. 269-10/88-STN regarding grant of temporary Status to casual labourers and regularisation scheme.

M3 21-10-92 Xerox copy of Circular No. 269-3/92-STN of Assistant Director General (STN).

M4 17-12-93 Xerox copy of circular of Asstt. Director General No. 269-4/93-STN II regarding grant of temporary Status and regularization scheme, 1989 to casual labourers. I.D. No. 489/2001.

Witnesses Examined : None

Documents Marked :

Ex.No. Date Description

W1 18-1-88 Xerox copy of service certificate issued to the Petitioner.

W2 05-07-93 Xerox copy of working days details issued by the Assistant Engineer (Phones) to the Asst. Engineer Staff Relations.

W3 31-03-95 Xerox copy of certificate issued by the Sub Divisional Engineer (Phones) to the Petitioner.

W4 06-03-96 Copy of judgement of the Central Administrative Tribunal, Madras Bench in O.A. No. 350/95

For the II Party/Management :

Ex.No. Date Description

M1 30-03-85 Xerox copy of letter No. 270/6/84-STN regarding casual labour engagement.

M2 07-11-89 Xerox copy of circular No. 269-10/89-STN regarding grant of temporary status to casual labourers and regularisation scheme

M3 21-10-92 Xerox copy of Circular No. 269-3/92-STN of Assistant Director General (STN).

M4 17-12-93 Xerox copy of circular of Asstt. Director General No. 269-4/93-STN II regarding grant of temporary Status and regularisation scheme, 1989 to casual labourers. I.D. No. 490/2001

Witnesses Examined : Note

Documents Marked :

Ex.No. Date Description

W1 29-12-88 Xerox copy of letter No. AM(S)E-1A/88-89/V/96 regarding absorption of casual labourers.

W2	30-11-89	Xerox copy of letter No. JNCN/C.7/89-90-116 regarding casual labourer-stoppage.
W3	02-01-89	Xerox copy of letter from the Asstt. Engineer, Madras Telephones to Sri K. Muthuveeran.
W4	25-04-86	Copy of certificate issued by Assistant Engineer (Phones) to the Petitioner.
W5	31-07-86	Copy of certificates issued by Assistant Engineer (Phones) to the Petitioner.
W6	07-02-91	Copy of certificates issued by Assistant Engineer (Phones) to the Petitioner.
W7	07-03-90	Copy of Service of the Petitioner issued by the Management.
W8	10-05-91	Copy of letter No. DE/ADY/E. 15/91-92 From the Divisional Engineer, Madras Telephones to the A.G.M., Madras Telephones.
W9	29-07-91	Xerox copy of appointment order of the Petitioner issued by the Management.
W10	16-08-95	Xerox copy of judgement of the Central Administrative Tribunal Madras Bench in O.A. 877/95.

For the II Party/Management :

Ex.No.	Date	Description
M1	18-11-88	Xerox copy of letter No. 269-29/87-STN regarding regularisation of casual labour.
M2	19-08-92	Xerox copy of letter No. AST NFTE/AITEEULS & CLIV/ADS/92/12 regarding hunger strike.
M3	21-10-92	Xerox copy of Circular No. 269-3/92-STN of Assistant Director General (STN).
M4	17-12-93	Xerox copy of circular of Asstt. Director General No. 269/4/93-STN II regarding grant of temporary Status and regularisation scheme, 1989 to casual labourers.
M5	NIL	Bio Data with declaration by the Petitioner.

नई दिल्ली, 31 जुलाई, 2001

का. अा. 2184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग, रेल मेल सविस के प्रवर्तन के संबंध निवृत्तों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बेंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2001 को प्राप्त हुआ था।

[सं. एल-40012/105/90—आई आर (डी यू)]

कुल्दीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure

in the Industrial Dispute between the employers in relation to the management of Department of Post, Rail Mail Service and their workman, which was received by the Central Government on 3-7-2001.

[No. L-40012/105/90-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 5th July, 2001.

PRESENT :

Hon'ble V. N. Kulkarni, Presiding Officer.

C. R. No. 4/91

I Party :

Sri Annarao,
S/o Baswanappa Allur
C/o Ramesh Yergol, Advocate,
Sangameswaranagar,
Gulbarga Post,
Karnataka.

II Party :

1. The Supdt. of Rail Mail Service,
Hubli Division,
Hubli-580 028
2. The Sub-Record Officer,
RMS Sub-record Office,
Station Area,
Gulbarga (Karnataka).

APPEARANCES :

I Party : K. Appa Rao, Advocate.

II Party : J. M. Riazuddin, Advocate.

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-40012/105/90-IR(DU) dated 23/31-1-1991 for adjudication on the following schedule.

SCHEDULE

"Whether the action on the part of the Department of Posts, Rail Mail Service, Hubli Division, Hubli in terminating the services of Shri Annarao, S/o Baswanappa Allur, Ex. EDMM casual labour is justified? If not, to what relief the workman is entitled to?"

2. I party was working with the II party. His services were terminated and therefore, this Industrial dispute is raised.

3. Parties appeared and filed claim and counter statement respectively.

4. The case of the I party is that, he joined the services of the II party on 2-3-79 and since then he worked with the II party at Railway Mail Service, Sub Record Office, Station Area, Gulbarga continuously upto 1-10-1989.

5. It is the further case of the I party that he was entrusted with the work of facing the letter and also work as E.D. bringing bags etc. He was

paid Rs. 30.00 per day and his last pay was Rs. 1300.00 per month.

6. It is the further case of the party that he worked as Class IV category for 10 years and II party for no reason terminated his service on 1-10-89 and therefore the I party has prayed to pass award in his favour.

7. The case of the II party in brief is as follows.

8. The dispute is not maintainable as stated in para 2 of the Counter. There are no terms and conditions of the services between the I party and II party and this court has no jurisdiction with this dispute.

9. It is the further case of the Management that this employee is not a permanent employee. I party gets employed as an substitute in the leave vacancy of the regular candidates and gets disengaged when regular worker comes back to duty. The I party was not a permanent employee and he was an outsider and he has not worked continuously. The case of the I party is not correct and therefore the reference be rejected.

10. It is seen from the records that the management has not examined any witness. The I party workman got examined as WW 1 and the documents were as marked two exhibits. He says that he was working as ED in the beginning and there after he worked as Class IV. In his cross-examination he says that he worked in 1991 as ED. He has no order to say that he was appointed as Class IV with the management. The learned counsel for the management vehemently argued that in view of the decision of the Hon'ble Apex Court, in Civil Appeal No. 3385-86 of 1996 the ED agent are covered by the statutory regulation and these employees were civil servants regulated by these conduct rules and they are not workman attracting the provisions of the Industrial Disputes Act. Keeping in mind the principles held in the above decision of the Hon'ble Apex Court, the I party has no case on merit. The I party however tried to establish in his evidence that he also worked as Class IV servant, but his evidence is not believable because he says in his cross-examination that he also worked as Class IV servant, but he has no appointment order. The documents filed by I party are not clear and on the other hand they only show he was working as ED. Having considering this, I pass the following order :

ORDER

Reference is rejected.

(Dictated to the L.D.C. transcribed by him, corrected and signed by me on 5th July, 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 1 अगस्त 2001

का. भा. 2185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिसों के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण लखनऊ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एल-40012/229/99—आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sr. Superintendent of Post Offices and their workman, which was received by the Central Government on 1-8-2001.

[No. L-40012/229/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, LUCKNOW

Presiding Officer : Rudresh Kumar.

ADJUDICATION

I.D. No. 29/99

Ref. No. L-40012/229/99/IR(DU) Dated 29-10-99

BETWEEN

Ashok Kumar Sharma,
ED Packer as substitute H. No. 17/496,
Sector 17, Indira Nagar,
Lucknow.

AND

The Sr. Superintendent of Post Offices,
Lucknow Division, Lucknow.
New Hyderabad,
Lucknow.

AWARD

By reference No. L-40012/229/99/IR(DU) dated 29-10-99, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 made over this industrial dispute to adjudicate regularization of the workman on the post of ED Packer. Later, the reference was amended by substituting the work 'regularization' by 'reinstatement' vide corrigendum letter dated 23-2-2000. The amended reference is produced hereunder :

"Whether the demand of Shri Ashok Kumar ED Packer that he may be reinstated to the post of ED Packer is justified? If so, what relief he is entitled and from which date?"

1. The workman Ashok Kumar Sharma has sought reinstatement on the post of ED Packer, basing his claim on continuous working for more than 240 days

as substitute ED Packer at Bakshi Ka Talab post office, Lucknow. It is averred in the claim statement that he was engaged as substitute by one Ram Kumar, ED Packer, then posted at Bakshi Ka Talab post office, Lucknow and worked there from time to time in between the period 3-10-94 to 24-12-97. As he completed more than 240 days continuous service so is entitled to the said post, having fallen vacant on promotion of Ram Kumar in group 'D' post. The management instead of regularizing him to the said post, allegedly, terminated his services w.e.f. 24-12-97. This action of the management is impugned in the present industrial dispute.

2. The management has denied claim of the workman. It is admitted that Ashok Kumar Sharma was engaged by Ram Kumar on his own responsibility during the period he was on leave or otherwise. He was never engaged by the department nor he is entitled to lay claim to the post. The rules for appointment of ED Packer staff, leave and their promotion etc. permits EDPs to engage their substitute on his full responsibility as short gap arrangement, but does not entitle such substitute to claim the post of ED Packer, as a matter of right. The post of ED Packer is filled by way of selection. The rules prescribe educational and other eligibility criteria. Merely because Ashok Kumar Sharma was engaged as substituted by Ram Kumar, he will not be entitled to the post.

3. The management asserted further that Ashok Kumar Sharma was not engaged by the competent authority nor he was terminated by any order. Since he was working as substitute at the place of Ram Kumar on his responsibility, he ceased to be substitute on his resuming duty. The post of ED Packer, Bakshi Ka Talab, was filled by selection. Since 24-10-98, the post is not vacant.

4. There are no material on record to give inference that the workman was engaged by the department. In fact, the workman himself admitted that he was working as substitute of the Ram Kumar. He has not come with the facts of having been selected by the management or engaged as substitute by some competent authority. Rules applicable to ED Packer

permits engagement of a substitute by the Ed Packers when he proceeds on leave. Such engagements are totally on the responsibility of the ED Packers. A person tent authority. Rules applicable to ED Packer permits engagement of a substitute by the ED Packers when he proceeds on leave. Such engagements are totally on the responsibility of the ED Packers. A person engaged as a substitute can not claim right to the post on the basis of continuous working. The status of workman has never been that of the casual labour engaged by the department. According to his own version he was engaged by Ram Kumar. No material is on record to indicate that the workman was terminated by the competent authority. He was engaged by Ram Kumar and ceased to be so, on joining duties by him. This private arrangement is permissible under rules, and does not provide legal entitlement to such substitute.

5. The management has filed letter of Ram Kumar dated 22-12-97 which specifically mention that Ashok

Kumar Sharma was working as substitute on his responsibility and on his joining, his (workman) duties ceased. This letter is in shape of information to the management, is, sufficient to indicate the status of the workman. A substitute is not casual labour on daily wages. The period of working has no relevance in the case of substitute which works simply on the responsibility and mercy of the person who engaged him. The rules accord sanction to the ED Packer to engage his own substitute but does not give right to the substitute to claim the post. In the given circumstances there is no evidence on the record to state that the workman was entitled to be reinstated on the basis of his having worked as substitute ED Packer. The workman was not a daily wages employee and was only wrking as substitute as per service rules of Postal and Extra Departmental Staff. In the facts and circumstances of the case, the provision of Section 25-F is not applicable. Accordingly, the workman is not entitled to claim reinstatement as EDP on the basis of continuous service for more than 240 days.

6. Thus, the workman Ashok Kumar Sharma is not entitled to reinstatement as discussed above.

7. Award accordingly.

Lucknow.

23-7-2001.

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का. प्रा. 2186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार एरोनॉटिकल डेवलपमेंट एस्टेब्लिशमेंट के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट को प्रकाशित करती है, है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. ए.स.-14012/16/95-आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2186.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Aeronautical Development Establishment and their workman, which was received by the Central Government on 1-8-2001.

[No. L-14012/16/95-IR(DU)]

KULDIP RAL VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, "SHRAM SADAN"III Main, III Cross, II Phase, Tumkur Road,
Yeshwanthpur, Bangalore.

Dated : 25th July, 2001

PRESENT :

Hon'ble Shri V. N. Kulkarni, B.Com. LLB.,
Presiding Officer.CGIT-CUM-LABOUR COURT,
BANGALORE

C.R. No. 86/97

General Secretary,
Indian Employees Union,
No. 58, 1 Stage, 1 Floor,
V phase, West of Chord Road,
Rajajinagar,
Bangalore-560 044
(Advocate-Shri N. G. Padukhe)

II PARTY

The Administrative Officer,
Aeronautical Development
Establishment,
C. V. Ramannagar,
Bangalore-560 093
(Advocate-Shri B. P. Puttasiddalah).

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-14012/16/95-IR(DU) dated 30-11-95 for adjudication on the following schedule:

SCHEDULE

"Whether the activities of the Management of Aeronautical Development Establishment, Bangalore would constitute an "Industry" under the Industrial Dispute Act and, if so, whether the action of the Management of Aeronautical Development Establishment, Bangalore in terminating the services of Shri C. P. Umashankar, H. Louis, K. Chandrappa and P. K. Ranganathan is legal and justified? If not to what relief are the workmen entitled?"

2. Four workmen are represented by General Secretary, Employees Union, Bangalore. They are working as Tradesman work for the period from 3-12-1986 to 20-10-1989, 3-2-1987 to 29-10-1989, 20-9-1987 to 20-10-1989 and 3-3-1986 to 20-10-1989 and they were asked not to come for duty therefore, dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.
2197 GI/2001-17

4. The case of the first party workmen in brief are narrated as under:

5. The first party workmen, namely Shri C. P. Umashankar, Sri H. Louis, Shri K. Chandrappa and Shri P. K. Ranganathan were working as 'Tradesman work' for the period from 3-12-1986 to 20-10-1989, 3-2-1987 to 29-10-1989, 20-9-1987 to 20-10-1989 and 3-3-1986 to 20-10-1989 with the second party.

6. It is the further case that on 20-10-1989 they were asked not to come for duties stating that they will be given regular appointment after their names are sponsored by the Employment Exchange in the first week of November 1989. The workmen did not receive any communication and came to know that the Employment Exchange will not sponsor their names unless requisitioned by the second party.

7. It is the further case of the workmen that they issued legal notice dated 10-11-1989 informed the second party that they are ready and willing to join the duties. But the management did not take them for duty and the action of the management in terminating the services of the first party workmen is nothing but retrenchment and the management having not complied with the mandatory provisions of law pertaining to retrenchment, the termination is unjust because provisions of Section 25F (a & b) of the ID Act were not complied and the workmen are deprived of all benefits. The Workmen for these reasons have prayed to pass award in their favour.

8. The case of the Second party in brief is as follows:

9. The reference has no merit. The main contention of the Second Party is that the Second Party is not an Industry and therefore the question of termination etc. does not arise at all.

10. It is the further case of the management that the workmen were engaged as Casual Labourer and not as Tradesman work and the engagement was purely of casual nature and the payments were made to them on week to week basis. They were not regular employees.

11. It is the further case of the management that no assurance was given to the individuals for their appointments because no person can be given appointments against any ground 'C' or 'D' posts unless he fulfills the qualitative requirements as per recruitment rules and get sponsored by the Employment Exchange and selected by the Selection Committee.

12. It is the further case of the management that one of their sister establishment i.e. GTRE at Bangalore also do not constitute Industry as defined in the Industrial Dispute Act as its functions are of sovereign nature as per Government of India Ministry of Labour letter No. L-42012/58/88-D2(b) dated 29-11-1990. The management for these reasons has prayed to reject the reference.

13. It is seen from the records that on behalf of the management MWI is examined. Against this Shri P. K. Ranganathan is examined as WWI on behalf of the workmen. After the close of the evidence I have heard both sides in detail.

14. It is seen from the records that in the instant case the court by its order dated 14th September, 1999 in all these cases namely CR. No. 86/97, 95/97, 96/97, 97/97, 98/97, 99/97 and 100/97 has held that the Second party is an Industry.

15. In view of his finding, now the contention of the management that it is not an Industry has no merit and the second party management is an Industry.

16. According to the evidence of MW1 the first party workmen were appointed as Tradesman Work and were paid remuneration on weekly basis. He also says that recruitment rules were changed and there was a direction to regularise this category of workman who have fulfilled the conditions laid down and these workmen were not coming under the rules prescribed, so they have stopped coming to the work. MW1 admits in his cross examination that these workmen were told not to come to duty w.c.f. 20-10-1989. He also admits that the names shown in the Application at para No. 3 were regularised.

17. With this cross examination it is clear that these workmen were appointed as Tradesman work. Admittedly no compensation was paid and the mandatory provisions of ID Act were not complied. No charge sheet was given to these workmen and there is no enquiry against these workmen.

18. It is clear that the management was acted illegally without complying the mandatory provisions. MW1 is also admitted that some similar workmen were regularised. There is no explanation from the management as to why these workmen were not regularised. MW1 further says in his cross examination that he does not know the qualifications of the first party Workmen. The management has not given opportunity to consider the case of the workmen for regularisation. MW1 has admitted in his cross examination that they have not paid any compensation. He has volunteered and stated that it was not necessary but there is no truth in this.

19. We have the evidence of WW1 who has given evidence on behalf of himself and other workmen. He says in his evidence that the second issued any notice or paid any compensation. He says in his cross examination that he studied upto 8th standard and other workmen are also educated.

20. In my opinion the refusal is not legal. The learned counsel for the first party vehemently argued that the rules relied by the management are detailed in letter dated 14-12-90 and refusal of duty to these workmen are in the letter dated 20-12-89. The rules are not applicable and the management is not justified in refusing to give work without complying the provisions of Section 25F (a & b) of the ID Act. There is no merit in this submission made by the management that provisions of Section 25 F(a&b) are not applicable.

21. According to the material before us these workmen are also qualified and the recruitment rules dated 14-12-90 are not applicable to these workmen because they are terminated on 20-12-89 without any justification.

22. The learned counsel for the first party relied following decisions:

- (i) AIR 1988 SC 37
- (ii) 1989 (2) LLJ-110
- (iii) Full Bench Judgement (CAT) Vol-2
- (iv) 1999(1)LLJ 1012 Paras 5 & 8.
- (v) 1985(2) SCC 136 Para 15
- (vi) 1985 LIC 1733 Paras 7 & 8
- (vii) AIR 1968 SC 11413 Para 5
- (viii) 1982(2) SCC (L&S) 42
- (ix) 1950 LLJ 921 Page 948

23. I have read all the decisions carefully. Keeping in mind the principles held in the above decisions and the fact that the management has illegally refused to give work to these workmen, I am of the opinion that there is merit in the dispute and the action of the management is not legal and justified.

24. I have given my best consideration to the decisions relied by the first party workmen and the facts of the case, I am of the opinion that the action of the management is illegal. Accordingly I proceed to pass the following order :

ORDER

The reference is partly allowed and the management is directed to reinstate the first party workmen from the date of their dismissal and regularise them as per rules. In the given circumstances no back wages are allowed.

(Dictated to PA transcribed by her corrected and signed by me on 25th July 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का. प्र. 2187 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिस के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अन्तर्गत में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एल-40012/82/98-आई याग (डी गृ)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2187.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Superintendent of

Post Offices and their workman, which was received by the Central Government on 1-8-2001.

[No. L-40012/82/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 26th June, 2001

PRESENT :

K. KARTHIKEYAN, Presiding Officer

Industrial Dispute No. 90/2001

(Tamil Nadu State Industrial Tribunal,

I.D. No. 42/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri B. Palanivelu and the Management of the Superintendent of Post Offices, Nagapattinam)

BETWEEN

Sri B. Palanivelu ... I Party/Workman

AND

The Superintendent of Post Offices,

Nagapattinam. ... II Party/Management

APPEARANCE :

For the Workman—M/s. Jothivani. G. V. Kasturi, Advocates.

For the Management—Sri M. K. Jeyakaran, Advocate.

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have received the concerned Industrial Dispute for adjudication Order No. L-40012/82/98/IR(DU), dated 2-1999.

his reference has been made earlier to the Tamil Nadu Industrial Tribunal, where it was taken on file I.D. No. 42/99. When the matter was pending in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of his case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 30-1-2001. On receipt of notice from this Tribunal, counsel on either side were not present with their respective parties. As there was no representation on either side, again notices were ordered to be sent to the counsel on record on either side by registered post with acknowledgment

ledgement due for the hearing 13-2-2001. On that day and also on the subsequent dates of hearing, both the parties to the dispute were not present. The Claim Statement of the I Party/Workman was filed on 20-6-2000 before the Tamil Nadu State Industrial Tribunal, though the counsel for the I Party/Claimant entered appearance on 15-6-1999 itself. When the matter was pending there, for the II Party to file the Counter Statement after granting time on 20-6-2000 and the same was extended from time to time, the Counter Statement of the II Party/Management was not filed before that Tribunal, until it was transferred to the file of this Tribunal. Even after the transfer of this case to this Tribunal and the time for filing Counter Statement for the II Party was extended from time to time, no Counter Statement was filed, till 25-4-2001. Having found that the II Party/Management has not chosen to file the Counter Statement, the case was adjourned to 16-5-2001 for further proceedings in this matter.

2. When the matter was taken up for enquiry on 16-5-2001 and to proceed further in the absence of the Counter Statement of the II Party/Management on the request of the counsel for the I Party, the matter was adjourned to 30-5-2001. Then at the request of the counsel for the I Party, the matter was adjourned to 11-6-2001. On that day, the arguments advanced by the learned counsel for the I Party/Claimant was heard.

3. After perusing the Claim Statement of the I Party/Workman and other material papers on record and upon hearing the learned counsel for the I Party/Petitioner in respect of the claim made by the I Party Workmen in this industrial dispute as referred by the Government in the above mentioned order of reference and the matter having stood over till this date for consideration, this Tribunal has passed the following:—

AWARD

4. The Industrial Dispute referred to in the above order of reference by the Central Government for adjudication by this Tribunal is as follows:—

“Whether the action of the Management of Superintendent of Post Offices, Nagapattinam Division, Nagapattinam in terminating the services of Shri B. Palanivelu from the post of EDDA/EDPKR is legal and justified? If not, to what relief the workman is entitled?”

5. The brief facts of the industrial dispute, raised by the I Party/Claimant against the II Party/Management, the Superintendent of Post Offices, Nagapattinam are as follows:—

This I Party/Workman Sri B. Palanivelu (hereinafter referred to as Petitioner) was appointed as a part-time contingent water carrier on 21-2-1992 by the Sub-Postmaster, Karaikal by a memo dated 20-2-1992. The Petitioner served in the department as part-time water carrier from 21-2-1992. Prior to that he was employed as substitute E.D. Agent from the year 1989 to 1991. His name was included in the dovetailed list as EDAS awaiting absorption

While he was working as contingent water carrier at Karaikal, the sub Divisional Inspector (Posts), Karaikal appointed him as Extra Departmental Mail Carrier at Varichikudi on 24-11-95 in the vacancy, where the regular incumbent has been transferred to Kurumbakaram. The Petitioner was appointed so by oral orders. The Pay and allowances were drawn in the name of the Petitioner through acquittance rolls. He was working there in that Station as EDMC till 30-3-1997. Subsequently, he was transferred to Karaikal Bazar as E.D. Packer. He worked there till 25-5-1997, when he was terminated from service. As such, the Petitioner had continuously employed as E.D. Agent defect from 24-11-95 to 25-5-97 continuously and without any break. The Respondent has not issued any notice or orders, while terminating the services of the Petitioner as E.D. Packer, Karaikal Bazar. Oral orders only was passed for his termination of his service, without giving any notice or show cause notice or affording any opportunity. It is in violation of the principles of natural justice and a violation of Section 25F of the Industrial Disputes Act, 1947. The Petitioner has served in the Respondent/Department for more than 240 days in a clear vacancy and as such he is entitled for the privileges enunciated under the Industrial Dispute Act, since he being the workman as defined under section 25B of the Act. The Petitioner was drawing Rs. 420 plus D.A. and other allowances, while working as E.D. Agent. At no point of time, he was issued with any memo, warning or reprimand in the discharge of his duties and came to the adverse notice of his superiors. Challenging the illegal termination, the Petitioner has filed a petition before the Regional Labour Commissioner (Central), which has been ended in failure and on his submission of failure of conciliation report this reference has been made by the Ministry of Labour as an industrial dispute for adjudication by this Tribunal. Hence, this Tribunal may be pleased to pass an award, setting aside the oral order of termination of service of the Petitioner and direct the Respondent/Management to reinstate the Petitioner in service as Extra Departmental Packer, Karaikal Bazar with all attendant service and monetary benefits.

6. As the II Party/Management, the Respondent herein has not chosen to file any Counter and the learned counsel for the I Party/Workman, the Petitioner has chosen to advance her argument without any oral and documentary evidence in support of the averments in the Claim Statement of the I Party/Workman, this Tribunal has decided this matter with the available materials in this case.

7. The point for consideration is—

“Whether the claim made by the Petitioner/Workman that the action of the Management of Superintendent of Post Offices, Nagapattinam Division in terminating the services of the Petitioner from the post of EDDA/EDPKR is illegal and unjustified has been established? If so, to what relief the Petitioner is entitled?”

Point.—It is a specific averments of the Petitioner in his Claim Statement that prior to 21-2-1992 he was employed as substitute E.D. Agent from the

year 1989 to 1991 and in pursuance of the same, his name was included in the dovetailed list of EDAs awaiting absorption. For this specific averment about prior employment of the Petitioner in the Respondent Department, neither oral nor documentary evidence is available on the side of the Petitioner in this case as a substantial one. Further, no particulars about his prior service between 1989 to 1991 has been given in the Claim Statement as the post in which he was working and the place and the period of which he was working. No evidence worth the credit has been let in by the Petitioner to accept his averment that his name was included in the dovetailed list of EDAs awaiting absorption. The Claim Statement is bereft of particulars in respect of the date on which the alleged inclusion of the Petitioner's name in the dovetailed list and also his number in that list of people awaiting absorption.

8. Though it is averred in the Claim Statement that the Petitioner was appointed as part-time contingent water carrier on 21-2-1992, by a memo dated 20-2-1992 by the Sub-Postmaster Karaikal, no document as copy of the memo has been filed into Court. Further for the averment that his pay and allowances were drawn in his name through acquittance rolls also has not been proved by way of any acceptable evidence. From the entire averments in the Claim Statement of the Petitioner, it is seen that he has not been employed by the Respondent/Department to any vacant post of regular employee by adopting the procedure in the department for such appointment. It is not his version that he was a candidate sponsored by the Employment Exchange for a specific vacancy of the post in the Respondent/Department. On the other hand, it is his admitted version that he was working as a contingent water carrier. So under such circumstances, it is clearly seen that the alleged employment of this Petitioner by the Respondent/Department can only at the best a stop gap arrangement and not a permanent or semi-permanent appointment. The very fact that the Petitioner was not issued any written order of appointment or written order of termination of service shows that his services were utilized by the department temporarily as and when it was required. Further except the averment in the Claim Statement, no material evidence is placed before this Tribunal to show that this Petitioner had continuously employed as ED agent from 24-11-95 to 25-5-97 without any break. So, the Petitioner's averment in his Claim Statement that he served the Respondent/Department for more than 240 days in a clear vacancy and as such he is entitled for the privileges enunciated under the Industrial Disputes Act and his termination of service is in violation of Section 25F of the Industrial Act, 1947, cannot be accepted as correct. So under such circumstances, this Tribunal can easily come to the conclusion that the claim made by the Petitioner has not been established to grant the relief prayed for. Thus, the point is answered accordingly.

9. In the result, an award is passed holding that the alleged action of the Management in terminating the alleged services of the Petitioner/Workman in the post of EDDA/EDPKR is legal and justified and hence, the concerned workman is not entitled to any relief No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th June, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None.

Documents Marked :

On either side : Nil.

नई दिल्ली, 1 अगस्त, 2001

का. भा. 2188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल प्रोविडेंट फण्ड कमिश्नर के प्रबन्धतंत्र के संबद्ध निोजकों और उनके कर्मचारों के बीच, अन्तर्बंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एल-42011/12/96-आई आर (डी यू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Provident Fund Commissioner and their workmen, which was received by the Central Government on 1-8-2001.

[No. L-42011/12/96-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, 'SHRAM SADAN', III MAIN, III
CROSS, II PHASE, TUMKUR ROAD,
YESHWANTHPUR, BANGALORE

Dated, 18th July, 2001

PRESENT :

Hon'ble Shri V. N. Kulkarni, B. Com., LLB.,
Presiding Officer,
CGIT-Cum-Labour Court,
Bangalore.

C.R. No. 263/97

I PARTY

The Secretary General,
All India Employees Provident Fund,
Staff Federation,
r/o No. 53, K.H.B. Colony (MIG),
Bangalore-560079.
(Advocate—Shri B. Rama Kharvy)

II PARTY

The Central Provident Fund Commissioner,
No. 14, Hudco Vishala, Bhikaji Cama
Place,
New Delhi.
(Advocate—Shri Harikrishna S. Holla)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42011/12/96-IR(DU) dated 20-8-1997 for adjudication on the following schedule :

SCHEDULE

“Whether the EPF organisation is justified in not enhancing the eligibility limit for PLB to Rs. 3,500 from 1986-87 onwards and further increasing the eligibility limit for PLB to Rs. 4,500 from 1992-93? If not, to what relief the employees of EPF Organisation are entitled to?”

2. The First party union on behalf of the workmen of the management have raised this industrial dispute. The workmen are working with the management and their grievance is that the EPF Organisation is justified in not enhancing the eligibility limit for PLB to Rs. 3,500 from 1986-87 onwards and further increasing the eligibility limit for PLB to Rs. 4,500 from 1992-93 therefore, the Government of India has referred this dispute to this Tribunal.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the first party in brief is as follows :

5. It is the case of the workmen that Employees Provident Fund Organisation was established in 1952 for administration of the Scheme of Compulsory Contributory Provident Fund in accordance with the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952.

6. It is the further case of the workmen that on 21-9-1987 the Railway Board vide their memo No. E(F&A)II/87-PLB-4 enhanced the eligible wage limit from Rs. 2,500 to Rs. 3,500 per month but this enhancement in the eligible wage limit for PLB was not granted either in Posts and Telegraphs or in EPF Organisation. The Postal Employees moved an application before the Delhi Bench of the Central Administrative Tribunal in 1989 and got a favourable order in OA No. 493/89 ordered for the enhancement of eligible wage limit for PLB from Rs. 2,500 to Rs. 3,500 to P&T Employees as stated in para 4 of the Claim Statement.

7. It is the further case of the workmen that the eligible wage limit for PLB was increased from Rs. 3,500 to Rs. 4,500 to the Railway Employees from 1992-93 but the management is not justified in granting the same to the workmen.

8. It is the further case of the workmen that the PLB Scheme of the employees of E.P.F. Organisation was similar to that of the Railway Employees right from the very beginning. Therefore the action of the management is not correct and it is discriminatory and violative of their fundamental rights.

9. The administrative expenses including the salary and allowances of all categories of employees, are met out of the administrative charges collected by the E.P.F. Organisation from the employers.

10. The first party union workmen for these reasons has prayed to pass award in its favour.

11. The case of the Second Party in brief is as follows :—

12. It is the case of the management that this reference is not maintainable. The office of the Second Party is situated at New Delhi and merely because the office of the Secretary General of All India Employees Provident Fund Staff Federation is situated at Bangalore, the same does not give scope for rising a dispute before this Court. Therefore, the reference is liable to be dismissed for want of cause of action within the jurisdiction of this Tribunal. The second party has no independent powers under the provisions of the Act, therefore, this reference is not maintainable as stated in para 4 of the Counter.

13. It is the further case of the management that the reference is not maintainable because the employees of the Second Party Organisation are duly covered under the Administrative Tribunals Act, 1985 and the payment of PLB is also service matter case within the meaning of Section 14 of Administrative Tribunals Act, 1985, the first party ought to have filed an application before the Central Administrative Tribunal. Therefore, this reference is not maintainable.

14. It is the further case of the management that some of the employees of first party filed OA. No. 1255/1991 before the Calcutta Bench of CAT seeking the very relief now claimed in the present dispute. The said application has been dismissed by CAT, Calcutta Bench. The management has also given para-wise reply. It is said that the Railway and Postal Department functions under different acts. The management has given details of the functioning of Postal Department and Railways in the Counter.

15. It is the further case of the management that on demand of the Staff Federation to make applicable the orders dated 11-6-1991 of the CA1 to the employees of EPF Organisation and raise the ceiling from Rs. 2,300 to Rs. 3,500, a reference was made to the Ministry of Labour vide CPFC's letter No. IWSU-19(2)91/1209 dated 24-9-1991 requesting for enhancement of the pay limit from Rs. 2,500 to Rs. 3,500. The Ministry while rejecting the proposal informed that the matter was examined in consultation with the Ministry of Finance and the same could not be acceded. It was on 27-10-1993 when the Government conveyed its approval to the revised eligibility ceiling of Rs. 3,500 to the Employees of EPF Organisation subject to clearance by the Central Board of Trustees. The amount of bonus was continued to be computed on actual emoluments subject to the maxi-

mum of Rs. 1,600 and the employees drawing emoluments upto Rs. 3,500 were paid Productivity Linked Bonus from the year 1992-93 onwards. The existing Productivity Linked Bonus Scheme was to remain operative for a period of 5 years from 1986-87. The management for these reasons and for some other reasons has prayed to reject the reference.

16. It is seen from the records that rejoinder is filed by the Workmen and the contention is that the First party workmen have rightly reward the dispute and this court has jurisdiction. All the allegations made by the management are denied in para-wise.

17. The management and the workmen have given lengthy Written Arguments. I have read the arguments carefully.

18. It is seen from the records that the management has raised some points saying that this Tribunal has no jurisdiction.

19. The first ground is that the Second Party office is situated at New Delhi and therefore, the dispute is not maintainable before this Court. This dispute is also not maintainable for mis-joinder of necessary parties. It is also not maintainable because of the employees of Second Party Organisation are duly covered under the Administrative Tribunals Act, 1985.

20. I have considered all the points carefully. Admittedly this dispute is referred by the Competent Government i.e. the Central Government and this Tribunal has jurisdiction. The management has not proved all the legal points so as to say that the dispute is not maintainable. The written arguments are nothing but the repetition of the Counter.

21. It is seen from the available records that the scheme introduced by the Railways and Postal Department are totally different from one which is introduced in the Second Party Organisation and therefore, this Scheme introduced by the Second Party cannot be compared with the scheme introduced in the Railways and Postal Departments and therefore there is no merit in this reference. The demand for payment of Bonus under the Payment of Bonus Act, 1965 could not be acceded as contended by the management. The workmen have only given lengthy arguments but nothing is established by them to say that there is merit in this reference.

22. It is clear from the records that the Central Government revised the emoluments ceiling for payment of ad hoc bonus to the Central Government Employees and not covered by any of the scheme and in pursuance of the aforesaid decision EPF Organisation also revised the emoluments ceiling for payment of PLR to the employees of EPF Organisation from the accounting year 1984-85.

23. It is also clear from records that a reference was made to the Ministry of Labour by EPF Organisation to raise the ceiling from Rs. 2,500 to Rs. 3,500 but the Ministry of Labour while rejecting the proposal informed that the matter was examined in consultation with the Ministry of Finance and the same could not be acceded to.

24. This being the fact, I am of the opinion that there is no merit in this reference. I have already said that PLB Scheme of the second party Organisation

is not similar to Railway Employees from the very beginning. Because the employees of the Second party and the employees of the Railways are not similarly situated persons and they are not equal and therefore, there is no merit in the contention raised by the first party workmen in this behalf. The management is correct in its contention that merely because there is a surplus amount available in the fund it does not mean that the sum could be utilised for payment of PLB.

25. Admittedly surplus fund available if any has to be utilised by organisation for providing amenities to the working class by steam lining the working of the organisation by introducing computers and also for opening Sub-Regional Offices and Accounts Offices for the benefit of the working class. Admittedly firstly has not lead any evidence in respect of averments made by it.

26. I have carefully read the arguments of both sides but they are nothing but Claim Statement and Counter. I have read the decisions relied by the first party workmen.

27. The first party workmen has relied 2 decisions. The first decision is (1992) 20 Administrative Tribunals Cases 588 OA. No. 2489 of 1989. The facts of the case on hand are quite different from the facts of the above case and the first party cannot take benefit of the said decision.

28. The Second decision is AIR(36)1949 Federal Court III. The facts of the case on hand are quite different from the facts of the above case. Here the dispute is in respect of eligibility limit of PLB. I have already said that the first party workmen cannot be compared themselves with the employees of P&T and Railways.

29. Considering all this I am of the opinion that there is no merit in this reference and accordingly I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 18th July, 2001.)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का आ 2189 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल इंस्टीट्यूट ऑफ फ्रेशवाटर एक्वाकल्चर के प्रधान के संबंध नियोक्ता और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सचिव के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[न. एल-42012/36/98-माई आर (डी यू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Institute of Freshwater Aquaculture and their workman, which was received by the Central Government on 1-8-2001.

[No. L-42012/36/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT : BHUBANESWAR

PRESENT :

Shri S. K. Dhal, OSJS. (Sr. Branch) Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

Tr. Industrial Dispute case No. 188/2001

Dtd. Bhubaneswar, the 16th July, 2001.

BETWEEN

The Management of Central Institute of Freshwater Aquaculture, Kausalyagang, Bhubaneswar.

.. First Party-
Management.

AND

Their workman Shri Kashinath Ghadai, Ramachandra Ghadai, At. Gitalasuanlo, Via-Balipatna, Dist. Khurda.

.. Second Party-
Workman.

APPEARANCES :

Shri S. K. Tripathy, Head of the Institute

.. For the 1st Party-
Management.

Shri Kashinath, Ghadai.

.. For himself-
Workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-42012/36/98/IR (DU), dated 10-9-1998 :—

“Whether the claim of Shri Kashinath Ghadai that he had worked for 240 days continuously and was refused employment by the management and his services were terminated without following the prescribed procedure is legal and justified? If so, to what relief the workman is entitled to?”

2. While sending reference intimation was given to the Director, Central Institute of Freshwater Aquaculture, Kausalyagang, Bhubaneswar (herein-after called as the 1st Party-Management) and to the workman (hereinafter called the 2nd Party). In pursuance to the notice the 2nd Party-workman has filed his claim statement where he has pleaded that he was working as cook-cum-helper as NMR basis by the 1st Party-Management from 1-12-1990 to 30-8-1993 and was getting Rs. 750 per month. On 1-8-1993 when the 2nd Party-workman reported for duty the 1st Party-Management refused him employment without serving any notice. It is further pleaded that the Management has appointed a new man named as Shri Kailash Chandra Jena in his place. His further case is that his services was terminated as he demanded arrear of wages from 1-12-1990 to 30-8-1993 at the rate of Rs. 25 per day amounting to Rs. 4,200 and over time dues amounting to Rs. 15,000. Dispute raised by the 2nd Party was considered in conciliation proceeding wherein the Management admitted that the 2nd Party had worked 280 days but did not agree to reinstate him, but came forward to pay Rs. 2,080 subject to condition for withdrawal of the dispute by him. As the conciliation proceeding failed the matter was referred to the Government of India who in turn have made the present reference.

3. The 1st Party-Management has filed written statement denying the case of the 2nd Party-workman. It has been pleaded by the Management that the 2nd Party-workman was employed purely on job contract basis to clean the utensils of the training hostel and he was required to work for hardly one and half hours after lunch and one and half hours after dinner and was paid the charges accordingly. He was never engaged for the full day nor was paid minimum wages as claimed by him. The 2nd Party-workman remained absent from 1-10-1998 without intimation. While admitting the appointment of Shri K. C. Jene, and others, the 1st Party-Management has pleaded that they were continuing into service prior to the engagement of the 2nd Party. It has been specifically pleaded that, the 2nd Party has worked only for 208 days. It has been further pleaded that the Organisation of the 1st Party is not an industry within the definition under section 2(i) of Industrial Disputes Act. Hence, the reference is not maintainable.

4. On the above pleadings of the parties, the following issues were framed.

ISSUES

1. Whether the claim of Sh. Kashinath Gadai that he had worked for 240 days continuously and was refused employment by the Management and his services were terminated without following the prescribed procedure is legal and justified?
2. If so, to what relief the workman is entitled to?"
5. On behalf of the 2nd Party-workman; the workman concerned has been examined whereas the 1st Party-Management has examined one witness. No documents have been exhibited from either side though some documents were available in the record.

FINDINGS

ISSUE NO. I

6. The main question to be decided whether the 2nd Party-workman had worked for 240 days as a casual labourer. In his evidence the 2nd Party has deposed that he had worked from 1-12-1990 to 30-8-1993 and was initially getting the salary of Rs. 300 per month. If this is accepted then it would appear that he was getting Rs. 10 per day if he would have worked for whole month. He has further stated that it was subsequently enhanced to Rs. 750. He has stated that when he demanded his arrear amounting to Rs. 19,2000 it was not paid to him rather his services was terminated. He has denied the suggestion of the Management that he was engaged for cleaning of the utensils only. On the other hand the evidence adduced on behalf of the Management is that the 2nd Party was engaged for cleaning of utensils on contract basis from August, 1990 to Sept. 1991 and he was being paid Rs. 15 per day and from 1-10-1991 he absconded from the duty. In the cross-examination the witness has admitted that in the re-conciliation proceeding it was admitted that the 2nd Party-workman had worked for 208 days continuously. Nothing has been brought out from the mouth of the witness examined on behalf of the Management to disbelieve his evidence. No documents have been produced on behalf of the 2nd Party-workman in support of his case that he had worked for more than 240 days. I have perused the documents filed on behalf of the 2nd Party-workman and those documents have been despatched by the 1st Party-Management as seen from the evidence adduced during hearing of argument. All the documents produced are the correspondences made between the A.L.C. and the 1st Party-Management. In all the letters it has been mentioned that, the 2nd Party-workman had worked for 208 days. In one letter, dated 7-11-1997 it has been mentioned that the workman had worked for 280 days. During course of argument it has been stated on behalf of the Management that it was a type mistake that the workman had worked for 280 days as mentioned in the letter, dated 7-11-1997. The Management has adduced evidence that the 2nd Party had worked for 208 days. The 2nd Party has deposed that he has worked for more than 240 days. Neither party have produced any records in support of their pleadings. So it is oath against oath. In that case when the 2nd Party has raised the dispute the onus lies on him to establish that he was a casual labourer and had worked continuously for 240 days. In his written argument it has been submitted in Para-2 is that in the re-conciliation proceeding the Management had admitted to pay compensation amounting to Rs. 2080 would suggest that the Management had admitted his engagement for more than 240 days. According to the 2nd Party-workman the Management has concealed the official records and have suppressed the truth. I do not find any force in this submission because no where I find that any application was made by the workman to call for the relevant documents, from the custody of the 1st Party-Management. If such a course would have been taken and the Management had refused for the production of documents then this Tribunal could have drawn adverse inference against the Management. But in this case it could not be done as the

2nd Party-workman has not taken any step to call for the documents from the custody of the Management. The stand taken by the 1st Party-Management that the 2nd Party workmen had worked as a contract labourer and he himself left the hostel can not be dis-believed in absence of any materials. The Tribunal can not create a case for the 2nd Party without any oral or documentary evidence. In my opinion the 2nd Party has failed to establish that he had worked for more than 240 days continuously in the Organisation of the Management by placing co-gent materials. Hence, this Issue is answered against the 2nd Party-workman.

ISSUE NO. II

7. In view of my findings in respect of Issue No. I the 2nd Party is not entitled for any relief. The witness examined on behalf of the Management has stated in examination in chief that during re-conciliation proceeding the Management had agreed to pay the differential wages, but there was a condition for withdraw the dispute. In my opinion, the 2nd Party is entitled for that amount i.e. a sum of Rs. 2080 as his differential wages. The Management is directed to pay the said wages amounting to Rs. 2080 to the workman within three months from the date of answering this reference.

8. Though in the written statement the plea was taken that the reference is not maintainable no issue has been framed and it had not been pressed by both the parties during the course of argument. So I am not inclined to express my opinion in this regard.

Reference is answered accordingly.

S. K. DHAL, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का. अ. 2190 ---औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार अली यावर जंग नेशनल इंस्टीट्यूट फॉर द हियरिंग हैंडिकैप्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अंतर्ग्रह में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम नं.-II, मुम्बई के पंचाट की प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एन-42012/71/98-आई आर (डी य)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ali Yavar Jung National Instt. for the Hearing Handicapped and their workman

2497 GJ/2001--18

which was received by the Central Government on 1-8-2001.

[No. L-42012/71/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S N. Saundankar, Presiding Officer.

Reference No. CGIT-2/159 of 1998

Employers in relation to the Management of The Director,

Ali Yavar Jung National Institute for the Hearing Handicapped,
Bandra Reclamation,
Bandra (West)
Mumbai-400 050.

AND

Their Workmen

Shri Devu Tanu Kudtekar,
Sion Ayurvedic Hospital,
Bhaji Palychiwadi,
Sion,
Mumbai-400 022.

APPEARANCES :

For the Employer : Mr. M. V. Bhat, Advocate.
Mr. M. Vaidyanathan Representative.

For the Workmen : Mr. V. Narayanan, Representative.
Mumbai, dated 27th June, 2001

AWARD

The Government of India, Ministry of Labour by its Order No. L-42012/71/98/IR(DU) (dtd. 30-10-98—13-11-98 have referred the following dispute, for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-section (1) and Sub-section 2(a) of Section 10 of the Industrial Disputes Act 1947.

“Whether the action of the management of Ali Yavar Jung National Instt for the Hearing Handicapped, Mumbai by illegally terminating the services of the workman Shri Devu Tanu Kudtekar, and not to regularise him is legal and justified? If not, to what relief the workman is entitled?”

The employee Mr. Kudtekar filed a Statement of Claim Ex-5 contending that the Ali Yavar Jung National Institute for Hearing Handicapped is purely a Central Govt. controlled Institution. For various gardening activities the said Institute engaged gardeners. He was employed as Gardener by the management Institute on 1-2-1989. He contended that he was forced to do extra work but was not paid overtime for the same. He continuously worked without any break from the appointment till 31-3-1997. He contended that on 1st April 1997 he was prevented by the Security Personnel and was not allowed to do

his regular duties. He was orally told that Institute terminated his services. He contended that by various correspondence he requested the management to take him on duty, but in vain. Therefore, he approached the Regional Labour Commissioner (C), Mumbai who in turn tried for conciliation, however, that went in vain. He contended that the management terminated him abruptly in getting the gardening work done through the labours of the Contractors. His termination is illegal. Consequently, the management be directed to regularise his service with continuity and he be given full back wages as per the grade of gardener.

The management resisted the claim of Shri Devu Tanu Kudtekar, by filing written statement Ex.-7/12 contending that the Institute is not the department of any of the Government organisation. Management is not the State nor an Industry. It is contended that the Institute is registered under the Society Registration Act and run by the Council, of which aim and object is to get proper training by the Hearing Handicapped, which activities cannot be treated as an Industry. Therefore, the Institute is not an industry within the meaning of Section 2(j) of the I.D. Act 1947, consequently this tribunal has no jurisdiction to decide the reference. It is further contended that Mr. Devu Tanu Kudtekar, was engaged as Gardener Labour on a daily wage on purely temporary basis for a period of five days per week with break, and that he was paid daily wages as per the rates prescribed by the Govt. of Maharashtra. He has not worked 240 days in any of the years. Consequently, management prayed for dismissal of claim.

On perusing the rival pleadings of the parties my learned predecessors framed the following Issue at Ex.-10 and my findings thereon for the reasons recorded below :

Issues	Findings
1. Whether the tribunal has jurisdiction to decide the reference?	No
2. Whether the action of the management in terminating the services of Shri Devu Tanu Kudtekar, and not to regularise him is legal and justified ?	Does not Survive
3. If not, to what relief the workman is entitled to ?	Does not survive.

REASONS

Mr. Dev Tanu Kudtekar filed his affidavit at Ex. 11. However the management vide purshis Ex-13 contended that evidence of the Sr. Officer, Mr. Vaidyanathan recorded Ex-22 in Ref. No. CGIT-2/155 of 1998 be treated evidence of management in this matter. I have heard the Representative for the workman Mr. Narayanan and Shri M V Bhat for the management. I have also gone through the written submissions of Shri Kudtekar, Ex 14 and the management Ex-15 and the record is a whole.

At the threshold the learned counsel Mr. Bhat, for the management submitted that the management Institute is not an 'Industry' under section 2(j) of the

Industrial Disputes Act, therefore, this Tribunal has no jurisdiction to decide the reference and hence it is not maintainable. He has relied on the decision of Bombay High Court Prithviraj Deenarwa V/s. Director, Aliyavar Jung National Institute for Handicapped in writ petition, No. 4480/97 dated 16-10-97. On the other hand, the learned Representative Mr. Narayanan, urged with force that in view of the decision in Bangalore Water Works case the Institute has to be said to be an Industry, considering its rules and regulations. He relied on writ petition No. 738/97 decided by the Bombay High Court on 2-7-97.

Their Lordships of Bombay High Court in W.F. No. 4480 of 1997 in the case Prithviraj Deenarwa V/s. Director, Aliyavar Jung National Institute for Handicapped observed as under :

"Respondent is a society imparting education to the hearing handicapped. If one has regard the decision of the Supreme Court in the case of Chander Mohan Khanna Vs. National Council of Educational Research and Training and Others reported in (1991) 4 Supreme Court Cases 578 the Respondent cannot be treated as state as provided under Article 12 of the Constitution. In the aforesaid case the Supreme Court in paragraph 3 has observed thus :

"Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression 'state'. A wide enlargement of the meaning must be treated by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution corporation and agency are generally subject to state control. The state control does not render such bodies as 'state' under Article 12. The state control, however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of state aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory function of the state may largely point out that the body is 'state'. If the government operates behind a corporate veil, carrying out governmental activity and governmental functions, of vital public importance there may be little difficulty to identifying the body as 'state' within the meaning of Article 12 of the constitution. The writ petition, will not be maintainable. Moreover the petitioner imputes the termination of his contract. Petition for enforcement of contractual obligations also will not be maintainable. Besides the petitioner has an alternate efficacious remedy of a suit available."

Mr. Bhat learned counsel for the management submits that learned predecessor of this Tribunal in the

matter of the same management bearing Ref. No. CGIT-2/58 of 1998 relying on above decision disposed of the same for want of the jurisdiction on 18-2-99. On going through the record and the rulings of the Honourable High Court, it is clear that management is not an Industry within the meaning of Section 2(j) of the I.D. Act. Therefore, this tribunal has no jurisdiction to decide the reference. Issue No. 1 is therefore, answered accordingly. In view of my finding on Issue No. 1, Issue No. 2 and 3 do not survive, hence they are answered accordingly. Therefore, the following Order is passed.

ORDER

Reference stands disposed of for want of jurisdiction.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2191: औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अली यवर जंग नेशनल इंस्टिट्यूट फोर द हियरिंग हैंडीकेप्ड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अविकरण न II, मुंबई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एल-42012/72/98-आई आर (डी यू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2191.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ali Yavar Jung National Instt. for the Hearing Handicapped and their workman which was received by the Central Government on 1-8-2001.

[No. L-42012/72/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIAL NO. 2, MUMBAI

PRESENT :

Shri S. N. Saundankar, Presiding Officer

Reference No. CGIT 2 161 of 1998

Employers in relation to the Management of The Director, Ali Yavar Jung National Institute for the Hearing Handicapped.

Bandra Reclamation,
Bandra (West),
Mumbai-400050.

AND

Their Workmen

Shri Laxman Devji Rewale,
Pawar Chawl,
Rajiv Nagar,
S. B. Patil Road,
Gazdhar Bangh,
Santacruz (W),
Mumbai-400054.

APPEARANCES :

For the Employer.—Mr. M. V. Bhat,
Advocate, Mr. M. Vaidyanathan,
Rep.

For the Workman.—Mr. V. Narayanan,
Representative.

Mumbai, dated the 26th day of June, 2001

AWARD

The Government of India, Min. of Labour, by its Order No. L-42012/72/98-IR(DU) dated 13-11-98 have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-section (1) and sub section 2(a) of Section 10 of Industrial Disputes Act 1947.

“Whether the action of the management of Ali Yavar Jung National Instt. for Hearing Handicapped, Mumbai by illegally terminating the services of Shri Laxman Devji Rewale, and not to regularise him is legal and justified. If not, to what extent the workman is entitled?”

The employee Mr. Laxman Devji Rewale filed a Statement of Claim Ex-5 contending that the Ali Yavar Jung National Institute for Hearing Handicapped is purely a Central Govt. controlled Institution. For various gardening activities the said Institute engaged gardeners. He was employed as Gardener by the management Institute on 03-3-1994. He contended that he was forced to do extra work but was not paid overtime for the same. He

continuously worked without any break from the appointment till 31-3-1997. He contended that on 1st April, 1997 he was prevented by the Security Personnel and was not allowed to do his regular duties. He was orally told that Institute terminated his services. He contended that by various correspondence he requested the management to take him on duty, but in vain. Therefore, he approached the Regional Labour Commissioner (C), Mumbai who in turn, tried for conciliation, however, that went in vain. He contended that the management terminated him abruptly in getting the gardening work done through the labours of the Contractors. His termination is illegal. Consequently, the management be directed to regularise his service with continuity and he be given full back wages as per the grade of gardener.

The management resisted the claim of Shri Laxman Devji Rewale by filing written Statement Ex-7/12 contending that the Institute is not the department of any of the Government organisation. Management is not the State nor an Industry. It is contended that Institute is registered under the Society registration Act and run by the Council, of which aim and object is to get proper training by the Hearing Handicapped, which activities cannot be treated as an Industry. Therefore, the Institute is not an industry within the meaning of Section 2(j) of the I.D. Act 1947, consequently, this tribunal has no jurisdiction to decide the reference. It is further contended that Mr. L. D. Rewale was engaged as Gardener labour on a daily wage on purely temporary basis for a period of five days per week with break and that he was paid daily wages as per the rates prescribed by the Govt. of Maharashtra. He has not worked 240 days in any of the years. Consequently, management prayed for dismissal of claim.

On perusing the rival pleadings of the parties my learned predecessor framed the following Issues at Ex-10 and my findings thereon for the reasons recorded below :—

Issues	Finding
1. Whether the tribunal has jurisdiction to decide the reference ?	No.
2. Whether the action of the management in terminating the	

services if Shri L. D. Rewal Does and not to regularise him not is legal and justified. survive.

- (3) If not, to what relief the work- Does man is entitled to ? not survive.

REASONS :

Mr. L. D. Rewale filed his affidavit at Ex-11. However, the management vide Purshis Ex-13 contended that evidence of the Sr. Officer, Mr. Vaidyanathan, recorded Ex-22 in Ref. No. CGIT-2/155 of 1998 be treated evidence of management in this matter. I have heard the Representative for the workman Mr. Narayanan and Shri M. V. Bhat for the management I have also gone through the written submissions of Shri L. D. Rewale Ex-14 and the management Ex-15 and the record is a whole.

At the threshold the learned counsel Mr. Bhat for the management submitted that the management Institute is not an 'Industry' under section 2(j) of the Industrial Disputes Act, therefore, this tribunal has no jurisdiction to decide and hence it is not maintainable. He has relied on the decision of Bombay High Court Prithviraj Decharwa V/s. Director, Ali Yavar Jung National Institute for Handicapped in writ petition No. 4480/97 dated 16-10-97. On the other hand, the learned Representative Mr. Narayanan urged with force that in view of the decision in Bangalore Water Works case the Institute has to be said to be an Industry, considering its rules and regulations. He relied on writ petition No. 738/97 decided by the Bombay High Court on 02-7-97.

Their Lordships of Bombay High Court in W.P. No. 4480 of 1997 in the case Prithviraj Decharwa V/s. Director, Ali Yavar Jung National Institute for Handicapped observed as under :—

“Respondent is a society imparting education to the hearing handicapped. If one has regard to the decision of the Supreme Court in the case of Chander Mohan Khanna Vs. National Council of Educational Research and Training and Other's reported in (1991) 4 Supreme cases 578, the Respondent cannot be treated as state as provided under Article 12 of the Constitution. In the aforesaid case, the Supreme

Court in paragraph 3 has observed thus :—

“Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression ‘state’. A wide enlargement of the meaning must be tampered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution corporation and agency are generally subject to state control. The state control does not render such bodies as ‘state’ under Article 12. The state control, however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of state aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory function of the state may largely point out that the body is ‘state’. If the government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty to identifying the body as ‘state’ within the meaning of Article 12 of the Constitution. The writ petition will not be maintainable. Moreover, the petitioner impugns the termination of his contract. Petition for enforcement of contractual obligations also will not be maintainable. Besides, the petitioner has an alternate efficacious remedy of a suit available”.

Mr. Bhat learned counsel for the management submits that learned predecessor of this Tribunal in the matter of the same management bearing Ref. No. CGIT-2/58 of 1998 relying on above decision disposed of the same for want of the jurisdiction on 18-2-99. On going through the record and the rulings of the Honourable High Court, it is clear that management is not an industry within the meaning of Section 2(i) of the I.D. Act. Therefore, this tribunal has no jurisdiction to decide the reference. Issue No. 1 is therefore,

answered accordingly. In view of my finding on Issue No. 1, Issue No. 2 and 3 do not survive, hence they are answered accordingly. Therefore, the following order is passed.

ORDER

Reference stands disposed of for want of jurisdiction.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2192 : औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अली यवर जग नेशनल इन्स्टिट्यूट फॉर द हियरिंग हैंडीकैप्ड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, मुंबई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एल-42012/73/98-आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2192.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ali Yavar Jung National Instt. for the Hearing Handicapped and their workman which was received by the Central Government on 1-8-2001.

[No. L-42012/73/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. II, MUMBAI
PRESENT :

S. N. SAUNDANKAR, Presiding Officer

Reference No. CGIT-2/162 of 1998

Employers in relation to the Management of The Director, Ali Yavar Jung National Institute for the Hearing Handicapped.

Bandra Reclamation,
Bandra (West),
Mumbai-400050.

AND

Their Workmen

Shri Sitaram Balu Khambe,
Wageshwari Vibhag Sangh-3, Room No. 41,
Sakharam Lanjekar Marg,
Sewri,
Mumbai-400015.

APPEARANCES :

For the Employer.—Mr. M. V. Bhat,
Advocate, Mr. M. Vaidyanathan,
Rep.

For the Workman.—Mr. V. Narayanan,
Representative.

Mumbai, dated the 27th day of June, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-42012/73/98-IR (DU) dated 30-10-98/13-11-98 have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-section (1) and sub section 2(a) of Section 10 of Industrial Disputes Act, 1947.

“Whether the action of the management of Ali Yavar Jung National Instt. for Hearing Handicapped Mumbai by illegally terminating the services of Shri Sitaram Balu Khambe, and not to regularise him is legal and justified ? If not, to what relief the workman is entitled ?”

The employee Shri Sitaram Balu Khambe filed a Statement of Claim Ex-5 contending that the Ali Yavar Jung National Institute for Hearing Handicapped is purely a Central Govt. Controlled Institution. For various gardening activities the said Institute engaged gardeners. He was employed as Gardener by the management Institute on 02-01-1992. He contended that he was forced to do extra work but was not paid overtime for the same. He continuously worked without any break from the appointment till 31-3-1997. He contended that on 1st April, 1997 he was prevented by the Security Personnel and was not allowed to do his regular duties. He was orally told that Institute terminated his services. He contended that by various correspondence he requested the management to take him on duty, but in vain. Therefore, he approached the Regional Labour Commissioner (C),

Mumbai, who in turn, tried for conciliation, however, that went in vain. He contended that the management terminated him abruptly in getting the gardening work done through the labours of the Contractors. His termination is illegal. Consequently the management be directed to regularise his service with continuity and he be given full back wages as per the grade of gardener.

The management resisted the claim of Shri Khambe by filing written statement Ex-7/12 contending that the Institute is not the department of any of the Government organisation. Management is not the State nor an Industry. It is contended that the Institute is registered under the Society registration Act and run by the Council, of which aim and object is to get proper training by the Hearing Handicapped, Which activities cannot be treated as an Industry. Therefore, the Institute is not an industry within the meaning of Section 2(j) of the I.D. Act, 1947, consequently, this tribunal has no jurisdiction to decide the reference. It is further contended that Mr. Khambe was engaged as Gardener Labour on a daily wage on purely temporary basis for a period of five days per week with break, and that he was paid daily wages as per the rates prescribed by the Govt. of Maharashtra. He has not worked 240 days in any of the years. Consequently, management prayed for dismissal of claim.

On perusing the rival pleadings of the parties my learned predecessors framed the following Issues at Ex-10 and my findings thereon for the reasons recorded below :—

Issues	Findings
1. Whether the tribunal has jurisdiction to decide the reference ?	No.
2. Whether the action of the management in terminating the services of Shri Sitaram B. Khambe and not to regularise him is legal and justified ?	Does not Survive.
3. If not, to what relief the workman is entitled to ?	Does not Survive.

REASONS

Shri Sitaram B. Khambe filed his affidavit at Ex-11. However the management Vide pursis Ex-13 contended that evidence of their Sr. Officer, Mr. Vaidyanathan recorded Ex-22

in Ref. No. CGIT-2/155 of 1998 be treated evidence of management in this matter. I have heard the Representative for the workman Mr. Narayanan and Shri M. V. Bhat for the management. I have also gone through the written submissions of Shri Khambe Ex-14 and the management Ex-15 and the record is a whole.

At the threshold, the learned counsel Mr. Bhat, for the management submitted that the management Institute is not an 'Industry' under section 2(j) of the Industrial Disputes Act, therefore, this Tribunal has no jurisdiction to decide the reference and hence it is not maintainable. He has relied on the decision of Bombay High Court Prithviraj Deeharwa V/s. Director, Aliyavar Jung National Institute for Handicapped in writ petition, No. 4480/97 dated 16-10-97. On the other hand, the learned Representative Mr. Narayanan, urged with force that in view of the decision in Bangalore Water Works case the Institute has to be said to be an Industry, considering its rules and regulations. He relied on writ petition No. 738/97 decided by the Bombay High Court on 02-7-97.

Their Lordships of Bombay High Court in W.P. No. 4480 of 1997 in the case Prithviraj Deeharwa V/s. Director, Aliyavar Jung National Institute for Handicapped observed as under :

"Respondent is a society imparting education to the hearing handicapped. If one has regard to the decision of the Supreme Court in the case of Chander Mohan Khanna Vs. National Council of Educational Research and Training and Others reported in (1991) 4 Supreme Court Cases 578, the Respondent cannot be treated as state as provided under Article 12 of the Constitution. In the aforesaid case, the Supreme Court in paragraph 3 has observed thus :

"Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression 'state'. A wide enlargement of the meaning must be tampered by a wise limitation. It must not be lost sight of that in the modern

concept of welfare State, independent institution corporation and agency are generally subject to state control. The state control does not render such bodies as 'state' under Article 12. The state control, however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of state aid coupled with an unusual degree of control over the management and policies of the body and rendering of an important public service being the obligatory function of the state may largely point out that the body is 'state'. If the Government operates behind a corporate veil, carrying out governmental activity and governmental functions, of vital public importance, there may be little difficulty to identifying the body as 'state' within the meaning of Article 12 of the constitution. The writ petition, will not be maintainable. Moreover, the petitioner impugns the termination of his contract. Petition for enforcement of contractual obligations also will not be maintainable. Besides the petitioner has an alternate efficacious remedy of a suit available."

Mr. Bhat learned counsel for the management submits that learned predecessor of this Tribunal in the matter of the same management bearing Ref. No. CGIT-2/58 of 1998 relying on above decision disposed of the same for want of the jurisdiction of 18-2-99. On going through the record and the rulings of the Honourable High Court, it is clear that management is not an Industry within the meaning of Section 2(j) of the I.D. Act. Therefore, this tribunal has no jurisdiction to decide the reference. Issue No. 1 is therefore, answered accordingly. In view of my finding on Issue No. 1, Issue No. 2 and 3 do not survive, hence they are answered accordingly. Therefore the following Order is passed :

ORDER

Reference stands disposed of for want of jurisdiction.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का.प्र. 2193— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अली यवार जंग नेशनल इन्स्टिट्यूट फॉर द हिथरिंग हैंडीकैप्ड के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधीकरण नं. II; मुम्बई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एल-42012/74/98-आई आर (डी य)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2193:—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ali Yavar Jung National Instt. for the Hearing Handicapped and their workman which was received by the Central Government on 1-8-2001.

[No. L-42012/74/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. II, MUMBAI
PRESENT :

S. N. Saundankar, Presiding Officer
Reference No. CGIT-2/164 of 1998

Employers in relation to the Management of The Director, Ali Yavar Jung National Institute for the Hearing Handicapped.

Bandra Reclamation,
Bandra (West),
Mumbai-400050

AND

Their Workmen

Shri Ashok Ganpat Devekar,
Sayhadri Colony,
Shakha No. 5, Room No. 15,
Sewri,
Mumbai-400015.

APPEARANCES :

For the Employer.—Mr. M. V. Bhat, Advocate, Mr. M. Vaidyanathan, Representative.

For the Workman.—Mr. V. Narayanan, Representative.

Mumbai, dated the 27th day of June, 2001

AWARD

The Government of India, Min. of Labour, by its Order No. L-42012/74/98-IR(DU) dt. 30-10-1998/13-11-98 have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-section (1) and sub-section 2(a) of Section 10 of Industrial Dispute Act 1947.

“Whether the action of the management of Ali Yavar Jung National Instt. for the Hearing Handicapped, Mumbai by illegally terminating the services of the workman Sh. Ashok Ganpat Devekar, and not to regularise him is legal and justified. If not, to what relief the workman is entitled?”

The employee Mr. Ashok Ganpat Devekar filed a Statement of Claim Ex. 5 contending that the Ali Yavar Jung National Institute for Hearing Handicapped is purely a Central Govt. controlled Institution. For various gardening activities the said Institute engaged gardeners. He was employed as Gardener by the management Institute on 1-2-1994. He contended that he was forced to do extra work but was not paid overtime for the same. He continuously worked without any break from the appointment till 31-3-1997. He contended that on 1st April, 1997 he was prevented by the Security Personnel and was not allowed to do his regular duties. He was orally told that Institute terminated his services. He contended that by various correspondence he requested the management to take him on duty, but in vain. Therefore, he approached the Regional Labour Commissioner (C), Mumbai, who in turn, tried for conciliation, however, that went in vain. He contended that the management terminated him abruptly in getting the gardening work done through the labours of the Contractors. His termination is illegal. Consequently the management be directed to regularise his service with continuity and

he be given full back wages as per the grade of gardener.

The management resisted the claim of Shri Ashok Ganpat Devkar by filing written statement Ex-7/12 contending that the Institute is not the department of any of the Government organisation. Management is not the State nor an Industry. It is contended that the Institute is registered under the Society registration act and run by the Council of which aim and object is to get proper training by the Hearing Handicapped, which activities cannot be treated as an Industry. Therefore, the Institute is not an industry within the meaning of Section 2(j) of the I.D. Act 1947, consequently this tribunal has no jurisdiction to decide the reference. It is further contended that Mr. Devkar was engaged as Gardener Labour on a daily wage on purely temporary basis for a period of five days per week with break, and that he was paid daily wages as per the rates prescribed by the Govt. of Maharashtra. He has not worked 240 days in any of the years. Consequently, management prayed for dismissal of claim.

On perusing the rival pleadings of the parties my learned predecessors framed the following Issues at Ex-10 and my findings thereon for the reasons recorded below :—

Issues	Findings
1 Whether the tribunal has Jurisdiction to decide the reference ?	No.
2 Whether the action of the management in terminating the services of Shri Ashok Ganpat Does Devkar and nit to regularise not him is legal and justified ?	Survive.
3 If not to what relief the Does workman is entitled to ?	not Survive.

REASONS

Mr. Ashok G. Devkar filed his affidavit at Ex-11. However the management Vide pursis Ex-13 contended that evidence of the Sr. Officer, Mr., Vaidyanathan recorded Ex-22 in Ref. No. CGIT-2 155 of 1998, be treated evidence of management in this matter. I have heard the Representative for the workman Mr. Narayanan and Mr. Bhat for the management. I have also gone through the written submissions of Shri Devkar Ex-14

and the management Ex-15 and the record is a whole.

At the threshold, the learned counsel Mr. Bhat, for the management submitted that the management Institute is not an 'Industry' under section 2(J) of the Industrial Disputes Act, therefore, this Tribunal has no jurisdiction to decide the reference and hence it is not maintainable. He has relied on the decision of Bombay High Court Prithviraj Decharwa V/s. Director, Aliyavar Jung National Institute for Handicapped in writ petition, No. 4480/97 dated 16-10-97. On the other hand, the learned Representative Mr. Narayanan, urged with force that in view of the decision in Bangalore Water Works case the Institute has to be said to be an Industry, considering its rules and regulations. He relied on writ petition No. 738/97 decided by the Bombay High Court on 02-07-1997.

Their Lordships of Bombay High Court in W.P. No. 4480 of 1997 in the case Prithviraj Decharwa Vs. Director, Aliyavar Jung National Institute for Handicapped observed as under :—

“Respondent is a society imparting education to the hearing handicapped. If one has regard to the decision of the Supreme Court in the case of Chander Mohan Khanna Vs. National Council of Educational Research and Training and others reported in (1991) 4 Supreme Court Cases 578 the Respondent cannot be treated as state as provided under Article 12 of the Constitution. In the aforesaid case, the Supreme Court in paragraph 3 has observed thus :—

“Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression ‘state’. A wide enlargement of the meaning must be tampered by a wise limitation. It must not be lost sight that in the modern concept of Welfare State, independent institution corporation and agency are generally subject to state control. The state control does not render such bodies as ‘state’ under Articles 12. The state control, however,

vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of state aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory function of the state may largely point out that the body is 'state'. If the government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty to identifying the body as 'state' within the meaning of Article 12 of the constitution. The writ petition, will not be maintainable. Moreover, the petitioner impugns the termination of his contract. Petition for enforcement of contractual obligations also will not be maintainable. Besides the petitioner has an alternate efficacious remedy of a suit available".

Mr. Bhat learned counsel for the management submits that learned predecessor of this Tribunal in the matter of the same management bearing Ref. No. CGIT-2/58 of 1998 relying on above decision disposed of the same for want of the jurisdiction on 18-2-99. On going through the record and the rulings of the Honourable High Court, it is clear that management is not an Industry within the meaning of Section 2(j) of the I.D. Act. Therefore, this tribunal has no jurisdiction to decide the reference. Issue No. 1 is therefore, answered accordingly. In view of my finding on Issue No. 1, Issue No. 2 and 3 do not survive. Hence they are answered accordingly. Therefore, the following order is passed.

ORDER

Reference stands disposed of for want of jurisdiction.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अली यवर्ग जंग नेशनल इंस्टिट्यूट फॉर द हियरिंग हैंडिक्पड के प्रबंधन के संबंध में नियोजकों और उनसे

कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम नं. II, मुम्बई के पत्राट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[सं. एल-42012/75/98-आई आर (डीयू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001.

S.O. 2194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ali Yavar Jung National Institute for the Hearing Handicapped and their workman, which was received by the Central Government on 1-8-2001.

[No. L-42012/75/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar, Presiding Officer.

Reference No. CGIT-2/163 of 1998

Employers in relation to the management of The Director, Ali Yavar Jung National Institute for the Hearing Handicapped, Bandra Reclamation, Bandra (West), Mumbai-400050

AND

Their Workmen.

Shri Pitamber Krishna Pardeshi,
Argistron D'Souza Chawl,
Ahmad Road, Vile Parle,
Mumbai-400057.

APPEARANCES :

For the Employer : Mr. M. V. Bhat, Advocate.
Mr. M. Vaidyanathan, Representative.

For the Workman : Mr. V. Narayanan, Representative.

Mumbai, dated the 26th day of June, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-42012/75/98-IR(DU) dated 30th October, 1998/13th November, 1998 have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-section (1) and Sub-section 2(a) of Section 10 of Industrial Disputes Act, 1947.

"Whether the action of the management of Ali Yavar Jung National Institute for the Hearing Handicapped by illegally terminating the

services of Shri Pitambar Krishna Pardeshi and not to regularise him is legal and justified? If not, to what relief the workman is entitled?"

3. If not, to what relief the workman is entitled to?

Does not survive

REASONS

The employee Mr. Pitambar Krishna Pardeshi filed a Statement of Claim Ex. 5 contending that the Ali Yavar Jung National Institute for Hearing Handicapped is purely a Central Government-controlled Institution. For various gardening activities the said Institute engaged gardeners. He was employed as a Gardener by the management Institute on 2-2-89. He contended that he was forced to do extra work but was not paid overtime for the same. He continuously worked without any break from the appointment till 31-3-1997. He contended that on 1st April, 1997 he was prevented by the Security Personnel and was not allowed to do his regular duties. He was orally told that Institute terminated his services. He contended that by various correspondence he requested the management to take him on duty, but in vain. Therefore, he approached the Regional Labour Commissioner (C), Mumbai, who in turn, tried for conciliation, however, that went in vain. He contended that the management terminated him abruptly in getting the gardening work done through the labour of the Contractors. His termination is illegal. Consequently, the management be directed to regularise his service with continuity and he be given full back wages as per the grade of gardener.

The management resisted the claim of Shri Pitambar Krishna Pardeshi by filing written statement Ex. 7/12 contending that the Institute is not the department of any of the Government organisation. Management is not the state nor an Industry. It is contended that the Institute is registered under the Society Registration Act and run by the Council, of which aim and object is to get proper training by the Hearing Handicapped. Which activities cannot be treated as an Industry. Therefore, the Institute is not an industry within the meaning of Section 2(j) of the I.D. Act, 1947, consequently this tribunal has no jurisdiction to decide the reference. It is further contended that Mr. Pradeshi was engaged as Gardener Labour on a daily wage on purely temporary basis for a period of five days per week with break, and that he was paid daily wages as per the rates prescribed by the Government of Maharashtra. He has not worked 240 days in any of the years. Consequently, management prayed for dismissal of claim.

On perusing the rival pleadings of the parties my learned predecessors framed the following Issues at Ex-10 and my findings thereon for the reasons recorded below:—

Issues	Findings
1. Whether the tribunal has jurisdiction to decide the reference?	No
2. Whether the action of the management in terminating the services of Shri Pitambar Krishna Pardeshi and not to regularise him is legal and justified?	Does not survive

Shri F. K. Pardeshi filed his affidavit at Ex-11. However, the management vide purshis Ex-13 contended that evidence of their Sr. Officer, Mr. Vaidyanathan, recorded Ex-22 in Ref. No. CGIT-2/155 of 1993 be treated evidence of management in this matter. I have heard the Representative for the workman Mr. Narayanan and Shri M. V. Bhat for the management. I have also gone through the written submissions of Shri Pardeshi Ex-14 and the management Ex-15 and he record as a whole.

At the threshold, the learned counsel Mr. Bhat for the management submitted that the management Institute is not an 'Industry' under section 2(j) of the Industrial Disputes Act, therefore, this Tribunal has no jurisdiction to decide the reference and hence it is not maintainable. He has relied on the decision of Bombay High Court Prithviraj Decharwa v/s. Director, Aliyavar Jung National Institute for Handicapped in writ petition, No. 4480/97 dated 16-10-97. On the other hand, the learned Representative, Mr. Narayanan urged with force that in view of the decision in Bangalore Water Works case the Institute has to be said to be an Industry, considering its rules and Regulations. He relied on writ petition No. 738/97 decided by the Bombay High Court on 2-7-97.

Their Lordships of Bombay High Court in W.P. No. 4480 of 1997 in the case Prithviraj Decharwa V/s. Director, Aliyavar Jung National Institute for Handicapped observed as under:

"Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression 'state'. A wide enlargement of the meaning must be tampered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution corporation and agency are generally subject to state control. The state control does not render such bodies as 'state' under Article 12. 'The state control, however, vast and pervasive is not determinative. The Financial contribution by the state is also not conclusive. The combination of state aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory function of the state may largely point out that the body is 'state'. If the government operates behind a corporate veil, carrying out governmental activity and governmental functions, of vital public importance, there may be little difficulty to identifying the body as 'state' within the meaning of Article 12 of the constitution. The writ petition, will not be maintainable. Moreover, the petitioner impugns the termination of his contract. Petition for enforcement of contractual obligations also will not be maintainable. Besides the petitioner has an alternate efficacious remedy of suit available."

Mr. Bhat learned counsel for the management submits that learned predecessor of this Tribunal in the matter of the same management bearing No. Ref. No. CGIT-2/58 of 1998 relying on above decision disposed of the same for want of the jurisdiction on 18-2-99. On going through the record and the rulings of the Honourable High Court, it is clear that management is not an Industry within the meaning of Section 2(j) of the I.D. Act. Therefore, this tribunal has no jurisdiction to decide the reference. Issue No. 1 is therefore answered accordingly. In view of my finding on Issue No. 1, Issue Nos. 2 and 3 do not survive, hence they are answered accordingly. Therefore, the following order is passed :

ORDER

Reference stands disposed of for want of jurisdiction.

S. N. SAUNDRANKAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2195—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अली यवार् जंग नेशनल इन्स्टिट्यूट फॉर द हियरिंग हैंडीकैप्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम -II, मुम्बई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[स. एल-42012/76/98-आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2195.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ali Yavar Jung National Instt. for the Hearing Handicapped and their workman which was received by the Central Government on 1-8-2001.

[No. L-42012/76/98-IR(DU)]
KULDEEP VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II
MUMBAI

PRESENT :

S. N. SAUNDANKAR, Presiding Officer

Reference No. CGIT-2/155 of 1998

Employers in relation to the Management of The Director, Ali Yavar Jung National Institute for the Hearing Handicapped.

Bandra Reclamation,
Bandra (West),
Mumbai-400050

AND
Their Workmen

Shri Dilip Ratnu Khambe,
Wageshwari Vibhag Sangh-3, R. No. 41,
Sakharam Lanjekar Marg,

Sewri,
Mumbai-400015.

APPEARANCES :

For the Employer.—Mr. M. V. Bhat,
Advocate, Mr. M. Vaidyanathan,
Representative.

For the Workman.—Mr. V. Narayanan,
Representative.

Mumbai, dated the 26th day of June, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-42012/76/98/IR (DU) dated 30-10-1998/13-11-1998 have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-section (1) and sub-section 2(a) of Section 10 of Industrial Disputes Act 1947.

“Whether the action of the management of Ali Yavar Jung National Instt. for the Hearing Handicapped by illegally terminating the services of Sh. Dilip Ratnu Khambe, and not to regularise him is legal and justified. If not, to what relief the workman is entitled ?”

The employee Mr. Dilip Ratnu Khambe filed a Statement of Claim Ex-5 contending that the Ali Yavar Jung National Institute for Hearing Handicapped is purely a Central Govt. Controlled Institution. For various gardening activities the said Institute engaged gardeners. He was employed as Gardener by the management Institute on 17-4-1992. He contended that he was forced to do extra work but was not paid overtime for the same. He continuously worked without any break from the appointment till 31-3-1997. He contended that on 1st April, 1997 he was

prevented by the Security Personnel and was not allowed to do his regular duties. He was orally told that Institute terminated his services. He contended that by various correspondence he requested the management to take him on duty, but in vain. Therefore, he approached the Regional Labour Commissioner (C), Mumbai who in turn, tried for conciliation, however, that went in vain. He contended that the management terminated him abruptly in getting the gardening work done through the Labours of the Contractors. His termination is illegal. Consequently, the management be directed to regularise his service with continuity and he be given full back wages as per the grade of gardener.

The management resisted the claim of Shri Khambe by filing written statement Ex-7/15 contending that the Institute is not the department of any of the Government organisation. Management is not the State nor an Industry. It is contended that the Institute is registered under the Society registration Act and run by the Council, of which aim and object is to get proper training by the Hearing Handicapped, which activities cannot be treated as an Industry. Therefore, the Institute is not an industry within the meaning of Section 2(j) of the I.D. Act 1947, consequently this tribunal has no jurisdiction to decide the reference. It is further contended that Mr. Khambe was engaged as Gardener labour on a daily wage on purely temporary basis for a period of five days per week with break, and that he was paid daily wages as per the rates prescribed by the Govt. of Maharashtra. He has not worked 240 days in any of the years. Consequently, management prayed for dismissal of claim.

On perusing the rival pleadings of the parties my learned predecessors framed the following Issues at Ex-10 and my findings thereon for the reasons recorded below :—

Issues	Findings
1. Whether the tribunal has jurisdiction to decide the reference ? No.	
2. Whether the action of the management in terminating the services of Shri Dilip Ratnu Khambe and not to regularise him is legal and justified ?	Does not survive.

3. If not, to what relief the workman is entitled to ? Does not survive.

REASONS

Mr. Khambe filed his affidavit at Ex-13 and that the management examined Sr. Officer, Shri Vaidyanathan at Ex-22. I have heard the Representative for the workman Mr. Narayanan and Shri M. V. Bhat for the management. I have also gone through the written submissions of Shri Khambe Ex-25 and the management Ex-26 and the record is a whole.

At the threshold, the learned counsel Mr. Bhat, for the management submitted that the management Institute is not an 'Industry' under section 2(J) of the Industrial Disputes Act, therefore, this Tribunal has no jurisdiction to decide the reference and hence it is not maintainable. He has relied on the decision of Bombay High Court Prithviraj Decharwa V/s. Director, Aliyavar Jung National Institute for Handicapped in writ petition No. 4480/97 dated 16-10-97. On the other hand, the learned Representative Mr. Narayanan, urged with force that in view of the decision in Bangalore Water Works case the Institute has to be said to be an Industry, considering its rules and regulations. He relied on writ petition No. 738/97 decided by the Bombay High Court on 02-7-97.

Their Lordships of Bombay High Court in W.P. No. 4480 of 1997 in the case Prithviraj Decharwa V/s. Director, Aliyavar Jung National Institute for Handicapped observed as under :—

“Respondent is a society imparting education to the hearing handicapped. If one has regard to the decision of the Supreme Court in the case of Chander Mohan Khanna Vs. National Council of Educational Research and Training and Others reported in (1991) 4 Supreme Court Cases 578, the Respondent cannot be treated as state as provided under Article 12 of the Constitution. In the aforesaid case, the Supreme Court in paragraph 3 has observed thus :—

“Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression

'state'. A wide enlargement of the meaning must be tampered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution corporation and agency are generally subject to state control. The state control does not render such bodies as 'state' under Articles 12. The state control, however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of state aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory function of the state may largely point out that the body is 'state'. If the government operates behind a corporate veil, carrying out governmental activity and governmental functions, of vital public importance, there may be little difficulty to identifying the body as 'state' within the meaning of Article 12 of the Constitution. The writ petition, will not be maintainable. Moreover, the petitioner impugns the termination of his contract. Petition for enforcement of contractual obligations also will not be maintainable. Besides the petitioner has an alternate efficacious remedy of a suite available."

Mr. Bhat learned counsel for the management submits that learned predecessor of this Tribunal in the matter of the same management bearing Ref. No. CGIT-2/58 of 1998 relying on above decision disposed of the same for want of the jurisdiction on 18-2-99. On going through the record and the rulings of the Honourable High Court, it is clear that management is not an Industry within the meaning of Section 2(i) of the I.D. Act. Therefore, this tribunal has no jurisdiction to decide the reference. Issue No. 1 is, therefore, answered accordingly. In view of my finding on Issue No. 1 Issue Nos. 2 and 3 do not survive, hence they are answered accordingly. Therefore, the following Order is passed.

ORDER

Reference stands disposed of for want of jurisdiction.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2001

का.आ. 2196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इस्टिड्यूट ऑफ हैंडलूम टेक्नोलॉजी के प्रबंधकों के सबब नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई, के पचाट को प्रकणित करती है, जो केन्द्रीय सरकार को 1-8-2001 को प्राप्त हुआ था।

[स. एल-42012/228/94-आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 1st August, 2001

S.O. 2196 —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Institute of Handloom Technology and their workman, which was received by the Central Government on 1-8-2001.

[No. L-42012/228/94-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHENNAI

Tuesday, the 26th June, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 396/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 23/96)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri K. Rajendran and the Management of Indian Institute of Handloom Technology, Salem)

BETWEEN

Sri K. Rajendran : I Party/Workman.

AND

The Director : II Party/Management
Indian Institute of
Handloom Technology, Salem.

APPEARANCE :

For the Workman : M/s. D. Hariparanthaman &
V. Ajoy Khose,
Advocates.

For the Management : Sri D. Nandakumar,
Addl. C.G.S.C.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-42012/228/94-IR(DU) dated 26-2-1996.

This reference has been made earlier to the Tamil Nadu Industrial Tribunal, where it was taken on file as I. D. No. 23/96. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I. D. No. 396/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 20-2-2001. On receipt of notice from this Tribunal, counsel on either side present with their respective parties and prosecuted this case further.

This matter came up before me for final hearing on 31-5-2001, upon perusing the Claim Statement, Counter Statement, other material papers on record, the documentary evidence let in on the side of the I Party Workman and on hearing the arguments of learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Indian Institute of Hardloom Technology Salem, in terminating the services of Shri K. Rajendran is just, fair and legal? If not, to what relief the concerned workman is entitled?”

2. The Industrial Dispute between the parties is briefly as follows :—

The I Party/Workman Sri K. Rajendran (herein after referred to as the Petitioner) was selected by the II Party/Management (herein after referred to as Respondent) and employed as a Sweeper by an order dated 26-11-1987. He had put in 5 years of service with the Respondent. The Respondent has issued the charge memo dated 13-10-92 attributing certain misconducts against the Petitioner. The Petitioner gave a reply dated 16-10-92 denying the charges. Without considering his explanation and without holding any enquiry, as required under law, the Respondent has terminated the services of the Petitioner by an order dated 26-10-92. The order did not contain any reason. At the time of his termination, he was not paid compensation or notice pay as required by the Industrial Disputes Act, 1947. The Petitioner sent a representation to the Respondent to reconsider the decision. The Petitioner has also caused a legal notice dated 23-8-93 to the Respondent. The Respondent sent a reply notice dated 27-8-93 and

refused to reconsider his stand. Whereby, the Petitioner had sent a petition dated 22-9-93 to the Labour Officer, Labour Department of Tamil Nadu Govt. at Salem. He returned the application directing the Petitioner to raise the dispute before the Central Govt. Labour Department. Then the Petitioner has raised a dispute before the Assistant Labour Commissioner, (Central) by his letter dated 5-1-94. The conciliating authority sustained the objections raised by the Respondent/Management about the maintainability of the dispute on the ground that the Respondent is not an industry within the meaning of section 2(j) of Industrial Disputes Act and closed the petition. The Madras Bench of the Central Administrative Tribunal issued a direction to the Conciliation Officer to send a failure report to the Govt. Then on submission of failure report by the Conciliation Officer, the Central Govt. has referred this matter to the Tribunal for adjudication. The termination of service of the Petitioner by the Respondent/Management is wholly arbitrary, unjust and violative of Articles of 14 and 16 of Constitution. Thus the said order of termination is opposed to the principles of natural justice, since no enquiry was held before terminating the services of the Petitioner. Further, as the Petitioner had put in more than five years of service at the time of termination, no compensation or notice pay was given to the Petitioner, which is contrary to Section 25F of the Industrial Disputes Act. Hence, the action of the Management in terminating the services of the Petitioner/Workman is void, ab-initio. Therefore, this Tribunal may be pleased to pass an award holding that the termination of the service of the Petitioner is unjust and to direct the Respondent/Management to reinstate the Petitioner in service with back wages and all other attendant benefits.

3. The Respondent/Management had opposed the averments of the Petitioner in the Claim Statement which is briefly as follows :—

The dispute raised by the Petitioner is beyond the scope of this Industrial Tribunal and without jurisdiction. The dispute does not come under the purview of Industrial Disputes Act. The Petitioner Sri Rajendran was engaged as Sweeper paid from contingency w.e.f. 2-12-1987 and his services were terminated w.e.f. 26-10-1992. He had worked in this institute for nearly five years. Since he was engaged as a contingency paid staff, he was paid wages for the days he actually worked with necessary weekly off and national holidays. The memo dated 13-10-92 was given to him directing him to explain on his misbehaviour. During the tenure of his service in the Respondent institute he was irregular in duties and also he was in the habit of consuming intoxicating drinks while on duty. He was warned and issued memos on several occasions advising him to desist from such habits while on duty. In spite of such memorandums, the petition has failed to make any improvement in his attendance, conduct, behaviour etc. He had not been terminated all of a sudden. The series of written complaints from girls students and staff of the institute alleging indecency and misbehaviour against him were received. A thorough enquiry was conducted as per rules by an independent responsible officer of the institute. The witnesses were duly cross examined. Thereafter action has been taken to terminate the petitioner from service. The

petitioner has signed in the enquiry proceedings for having participated in the enquiry. The Govt. of India, Ministry of Labour, New Delhi vide their letter No. L-42012/47-86T/II(B) dated 5-7-88 had conveyed that the activities of Indian Institute of Handloom Technology, Salem are not be treated as industry under Industrial Disputes Act and as such the provision of Industrial Disputes Act does not apply to this institute. Hence, the Petitioner is not entitled to any compensation under the relevant rules, in view of the gravity of misbehaviour committed by the Petitioner and his scant respect for maintaining discipline and decorum while on duty, his request for reconsideration of his reinstatement in service had not been considered since it will be against the interest of the institute, which is an educational institution of All India repute as a premier institution in the South. For the notice issued by the Petitioner, the Respondent had sent a reply dated 27-8-93. In a similar case in the past, the Ministry of Labour, Govt. of India, New Delhi vide letter dated 5-7-88 has opined that the activities of Indian Institute of Handloom Technology are not to be considered as an 'industry' under the Industrial Disputes Act and as such the provision of Industrial Disputes Act does not apply to this institute. A thorough departmental enquiry was conducted before termination. The Petitioner is not entitled to any compensation under the relevant rules. Hence, the Tribunal may be pleased to dismiss this petition.

4. When the matter was pending before the Tamil Nadu State Industrial Tribunal earlier, the documents were marked by consent of counsel on either side as Ex. W1 to W9 and M1 to M7. The case was transferred during that stage to the file of this Tribunal as per the orders of the Central Govt. When the matter came up for final hearing here before this Tribunal, arguments of the counsel on either side were advanced.

5. The point for my consideration is :--

"Whether the action of the Management of Indian Institute of Handloom Technology in terminating the services of Sri. K. Rajendran is just, fair and legal? If not, to what relief, the concerned workman is entitled?"

Point :—It is admitted that the Petitioner was appointed as a Sweeper in the Respondent Indian Institute of Handloom Technology, Salem. Ex. W1 is the xerox copy of the appointment order. In that order itself it is clearly stated that the appointment is purely temporary and liable to be terminated at any time without any notice and without assigning any reason and if he is willing to accept the offer on these conditions, he should report for duty on or before 5th December, 1987. So from this, it is seen that the Petitioner was not appointed as a permanent employee of the Respondent Institute and the appointment given is only a temporary one, subject to the conditions mentioned therein. The Petitioner was given an appointment of Sweeper under such conditions is not disputed. Ex M1 is the xerox copy of the joining report dated 2-12-87 given by the Petitioner. The Petitioner's report for duty before 5-12-87 as mentioned in Ex. W1 shows that he was willing to accept the offer on those conditions mentioned in the

appointment order. It is clearly stated in the Counter Statement of the Respondent that a series of written complaints from guls students and staff of Respondent institute alleging indecency and misbehaviour against the Petitioner were received by the Respondent and a thorough enquiry has been conducted by a responsible officer of the Respondent Institute as a departmental enquiry wherein, witnesses examined were cross examined by the Petitioner. All these things have not been disputed by the Petitioner. Ex. W2 is the xerox copy of memo dated 13-10-92, wherein the incidence of misbehaviour of the Petitioner on four occasions have been noted. Ex. W3 is the xerox copy of the reply given by the Petitioner to the memo under Ex. W2. Ex. W4 is the xerox copy of order dated 26-10-1992 for the termination of service of the Petitioner. Ex. W6 is the Xerox copy of the legal notice issued by the Petitioner to the Respondent. Ex. W7 is the reply given by the Respondent's advocate to the Petitioner's advocate. On the side of the Respondent (xerox copies of various memoes issued to the petitioner have been filed, wherefrom it is seen the petitioner was in the habit of unauthorized absence for long periods and also he was issued memoes twice for consumption of liquor during duty time. All these misbehaviours have been mentioned in the counter statement itself. These xerox copies of the memos filed into Court by the Respondent/Management show that the said averments in the Counter Statement of the Respondent are only based on records. They are not disputed by the Petitioner. Further, the perusal of xerox copies of documents filed on behalf of the Respondent into Court clearly show that the petitioner was very irregular in attending his duties and used to be remained absent unauthorizedly. For the memo Ex. W2 issued on the basis of various incidence of misbehaviour xerox copies of documents have been filed into Court by the Respondent as supportive documents. A perusal of other documents, xerox copies, clearly show that an enquiry has been conducted for the charges made against the Petitioner under Ex. W2 memo by one Senior Lecturer of the Institute, Sri P. Ramalingam and in the enquiry proceedings, the Petitioner/Workman Sri K. Rajendran had taken part and subscribed his signature on every page of the enquiry proceedings. Only subsequent to the enquiry and on the basis of the findings given by the Enquiry Officer dated 26-10-92, the punishment of termination of service have been imposed by the Respondent, the Director of the Respondent Unit under Ex. W4. All these things go to show that the averments of the Petitioner in his Claim Statement that without conducting any enquiry and without assigning any reason the Petitioner was terminated by the Respondent on 26-10-92 is factually wrong. On the other hand, there is sufficient material available in this case to come to the conclusion that for the misconduct of the Petitioner/Workman, a charge memo has been issued and a regular enquiry has been conducted giving sufficient opportunity for the Petitioner/Workman to take part in the enquiry and on the basis of the findings given by the Enquiry Officer that the charges levelled against the Petitioner/Workman have been proved the competent authority had issued an order of termination as a punishment to the Petitioner employee. So under such circumstances, it cannot be said that no opportunity was given to the Petitioner/Workman and there is any violation of natural justice, from the available

evidence as documents on the side of the Respondent. It is clearly seen that the Petitioner/Workman while in service had remained unauthorisedly absent from duty for a considerable length of time and used to consumer liquor, while on duty and also misbehaved with the lady students of the institute. So, the Respondent/Management thought it fit that, it is not conducive or keeping the Petitioner in service for the Respondent in the institute and hence, he was terminated from service. The way in which the Petitioner was employed in the institute of the Respondent/Management shows that he is not entitled to any compensation or notice pay, since section 25F of the Industrial Disputes Act is not attracted to the present case. Under such circumstances, it is found that the action of the Management of Indian Institute of Handloom Technology, Salem, in terminating the services of Sri K. Rajendran, is just, fair and legal. Hence, the concerned workman is not entitled for any relief. Thus, the point is answered accordingly.

6. In the result, an award is passed holding that the action of the management of Indian Institute of Handloom Technology, Salem in terminating the services of Sri K. Rajendran is just, fair and legal. Hence, the concerned workman is not entitled to any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th June, 2001.)

K KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None.

DOCUMENTS MARKED :

For I Party/Workman :

Ex.	No.	Date.	Description
W1	26-11-87	—	Xerox copy of the appointment order issued by the Management to the Petitioner.
W2	13-10-92	—	Xerox copy of the memo issued by the Management to the Petitioner.
W3	Nil	—	Xerox copy of the letter from the Petitioner to the Management.
W4	26-10-92	—	Xerox copy of termination order issued by the Management to the Petitioner.
W5	23-11-93	—	Xerox copy of the letter from the Labour Officer to the Petitioner.
W6	23-8-93	—	Copy of advocate notice sent to the Management on behalf of the Petitioner.
W7	27-8-93	—	Xerox copy of reply given by the Management to the above notice.
W8	Nil	—	Xerox copy of industrial dispute raised by the Petitioner before the Labour Officer.
W9	8-6-94	—	Remarks/comments filed by the Management before the Asst. Labour Commissioner (C).

21/11/2001-20

नई दिल्ली, 31 जुलाई, 2001

का.प्र. 2197.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोक्ता और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. II, धनबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एल 20012/81/91-ध आर (सी-1)]

एन.पी. केसवन, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 30-7-2001.

[No. L-20012/81/91-I.R.(C-1)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 4 of 1992

PARTIES :

Employers in relation to the management of M/s. B.C.C.L and their workman.

APPEARANCES :

On behalf of the Workman.—Shri S. N. Goswami, Advocate.

On behalf of the Employers—Shri H. Nath Advocate.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 17th July, 2001.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(81)/91-I.R. (Coal-I), dated, the Nil,

SCHEDULE

"Whether the action of the management of Bhowra (N) OCP of M/s. Bharat Coking Coal in denying employment to the dependent son of Sh. N. K. Banerjee, Overman, who retired on 7-6-86, in terms of Circular No. BCCL/PA-II 5-2-128/77/31457-618 dated 22-6-1977 and para 9.4.4 of NCWA-III is justified? If not, to what relief is the workman entitled?"

2. The case of the concerned workman as per W.S. in brief is as follows.

The concerned workman in the W.S. submitted that he was appointed at Bhowra (N) Colliery as Overman on 1-1-45 and remained in the service to the satisfaction of the management till the date of his superannuation. He submitted that he was superannuated from his service with effect from 7-6-86 i.e. after completing his service to tune of 41 years continuously. The concerned workman submitted that none of his son was employed in Coal Mine or in any other establishment after his retirement and for which they are wholly dependent on the earning of the concerned workman. It has been further submitted that the management issued a circular vide dt. 22-6-77 and thereby agreed to provide employment of atleast one of the dependent of the employees who retires or die after in service for atleast 35 years in BCCL on fulfilment of certain condition. The concerned workman submitted that inspite of fulfilment of all the criteria the management inspite of his submitting application did not consider his case. The concerned workman alleged that the management has also violated the clear provision as laid down in clause 9.4.4 of NCWA-III arbitrarily. Accordingly the concerned workman submitted his prayer for passing an Award directing the management of Bhowra (North) Colliery O.C.P. of M/s. BCCL to absorb in employment one of his son as per circular issued by the management as well as the clause 9.4.4 of NCWA-III.

3. The management on the contrary after filing W.S.-cum-rejoinder has denied all the claims and allegation which the concerned workman asserted in his W.S. It has been disclosed that the management issued the relevant circular and that circular was valid upto the year 1978 as at that relevant time the concerned workman did not complete service of 35 years could not be considered at all. Moreover the management referring the decision of the Hon'ble Supreme Court reported in 1981 1 LLJ 337 (Yogendra Pal Singh Vs. Union of India submitted that Supreme Court also by the said decision has discarded appointment of any dependent of the employee of any particular concern taking into view that it would be in violation of Article 16 of the Constitution of India. Accordingly the management submitted that provision as laid down in clause 9.4.4 in NCWA relating to providing jobs to the dependent son of employee is violation of the Article of Constitution quoted above as held by the Hon'ble Supreme Court and for which the concerned workman cannot claim any advantage of that clause. Accordingly the management has prayed for passing an Award holding that the action of the management of Bhowra North O.C.P. of M/s. BCCL in denying employment to the dependent of Shri N. K. Banerjee

dependent son who retired on 7-6-86 is justified and for which the concerned workman is not entitled to any relief.

4. The points for decision in this reference are:---

"Whether the action of the management of Bhowra (N) OCP of M/s. Bharat Coking Coal in denying employment to the dependent son of Sh. N. K. Banerjee, Overman, who retired on 7-6-86 in terms of circular No. BCCL/PA-II/52/128/77/31457-618 dt. 22-6-1977 and para 9.4.4 of NCWA-III is justified? If not, to what relief is the workman entitled?"

Decision with Reasons

5. There is no dispute to hold that the concerned workman was Overman at Bhowra (North) Colliery under BCCL and he retired from his service on 7-6-86. It is the specific claim of the concerned workman that he joined under the management as Overman on 1-1-45. As no evidence is forthcoming before the Court rebuttal on the part of the management before the Court rebutting this claim there is no reason to disbelieve the submission of the concerned workman in regard to his length of service. It is the specific submission of the concerned workman that by a circular the management decided to arrange for employment of one dependent of retired employee who after rendering service of 35 years has been superannuated. The said circular in course of hearing was marked as Ext. M-3 on the part of the management. I have considered the circular and I find support relating to the claim of the concerned workman. According to clause (ii) of the said circular it has been clearly pointed out "under the claim for employment is restricted to only one dependent of such retired deceased employee who must not have any of his sons in employment, since before/after take-over in BCCL." Clause (i) on the contrary submitted "under the Scheme, retired/deceased employee must have to his credit 35 years of completed continuous service in the coal industry." It is the contention of the concerned workman that he submitted his application for employment of his son relying on this circular as the fulfilled the criteria which has been laid down. Learned Advocate for the management on the contrary reliving the discussion of the Central Consultative Committee meeting held on 7-6-79 at CCWO Conference Hall marked Ext. M-4 submitted that the said circular Ext. M-3 has become inoperative after 2-5-78. Learned Advocate submitted that as the concerned workman did not complete 35 years of service as on 1-4-78 his claim for employment of his dependent could not be considered at all. Learned Advocate for the management submitted referring decision reported in 1981 1 LLJ (337) that the Hon'ble Apex Court has discarded the views of giving employment to the employees dependent after the period of superannuation as the said decision went against the principle as laid down in Article 16 of the Constitution of India and referring the said decision learned Advocate for the management submitted that clause 9.4.4 of NCWA-III automatically has become redundant and as such relying on clause 9.4.4 the concerned employee is not entitled to get the benefit which he has prayed for. I have considered the decision referred to above and I have also considered clause 9.4.4 of NCWA-III.

It is seen that NCWA-III has come into force with effect from 11-11-83 when the concerned workman was very much in service and also after passing the above decision of the Hon'ble Appex Court. Circular for giving employment to one independent of the employee by the management is one thing and the provision laid down in NCWA is other though NCWA III has come into force after the same being accepted by the Government of India. Therefore, there is no scope at all to ignore NCWA-III in any manner whatsoever. It is further seen that after NCWA-III, NCWA-IV came into force. The validity of NCWA-III was from 1st January, 1983 to December 1986. NCWA-IV has deleted the clause 9.4.4 which very much was in existence in NCWA-III. Therefore, after promulgation of NCWA-IV no employee is entitled to get any such relief as per provision laid down in clause 9.4.4 of NCWA-III. The concerned workman was superannuated with effect from 7-6-86 when NCWA-III was very much invogue. Therefore, at this stage I find little scope to discard the claim of the concerned workman in view of submission of the learned Advocate for the management. As NCWA-III was very much accepted by the Government of India the management cannot avoid their responsibility to provide employment to one dependent of the concerned workman. After careful consideration of all the facts and circumstances I hold that the case of the concerned workman stands on cogent footing and for which he is entitled to the relief as prayed for. Accordingly the following Award is rendered :—

"The action of the management of Bhowra (N) OCP of M/s. Bharat Coking Coal in denying employment to the dependent son of Sh. N. K. Banerjee, Overman, who retired on 7-6-86 in terms of Circular No. BCCL/PA-II/5/2/128/77/31457-618 dated 22-6-1977 and para 9.4.4 of NCWA-III is not justified. Consequently, the dependent son of Sh. N. K. Banerjee, Overman is entitled to employment under the management of BCCL."

The management is directed to implement the Award as directed above within three months from the date of its publication in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का.ग्रा 2198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. II, धनबाद के पत्राट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[स. एल-20012/110/92-आई ग्रा (सी-I)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2198.—In pursuance of Section 1/ of the Industrial Dispute, Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 30-7-2001.

[No. 1-20012/110/92-IR(C-I)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD
PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No 118 of 1995

PARTIES :

Employers in relation to the management of
Mudidih Colliery of M/s. BCCL and their
workman.

APPEARANCES :

On behalf of the Workman.—None.

On behalf of the Employers.—Shri H. Nath,
Advocate.

STATE : Jharkhand.

INDUSTRY : Coal.

Dated, Dhanbad, the 17th July, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. 1-20012(110)92-I R. (Coal-I), dated, the 30th April, 1993.

SCHEDULE

"Whether the demand of R.C.M.S. for promotion of Shri A. N. Mondal to the post of Spl. Grade Clerk w.e.f. 22-1-83 and for regularising him as Office Supdt. in Technical Grade 'A' w.e.f. 28-5-84 is justified. If so, to what relief the workman is entitled?"

2. In this reference both the parties appeared and filed their respective W.S. documents etc. Subsequently the workman side abstained from appearing before this Tribunal and taking any further steps in this reference although Regd notices were issued to them. The reference is pending since 1995 and there is no reason to keep the same alive. Under such circumstances, a 'No dispute' Award is rendered and the reference is disposed of on 'No dispute'

Award basis presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का.आ. 2199—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार टिस्को के प्रबन्धन के पदाधिकारी निरीक्षक और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण स. 2, धानबाद के पचाट को प्रभावित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[स. एल-20012/183/92-आई आर (सी-1)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2199.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of TISCO and their workman, which was received by the Central Government on 30-7-2001.

[No. L-20012/183/92-IR(C-1)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.
Reference No. 3 of 1995

PARTIES :

Employers in relation to the management of Central Workshop of M/s. TISCO Ltd. and their workman.

APPEARANCES :

On behalf of the workman : **Shri D. Mukherjee, Advocate.**

On behalf of the employers : **Shri B. Joshi, Advocate.**

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 19th July, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section

10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(183)92-I.R. (Coal-I), dated, the 24th January, 1995.

SCHEDULE

"Whether the action of the management of Central Workshop Jamadoba of M/s. TISCO Ltd., in not giving proper designation and grade to **Shri S. K. Banerjee, Mechanist** as per nature of his work as **Schedular** from the date he was performing the job as **Schedular** is justified? If not, to what relief the workman is entitled?"

2. The case of the concerned workman as per W.S. in brief is as follows :—

The concerned workman in his W.S. Submitted that he was a permanent workman under the management since long with unblemished record of service. Thereafter in the year 1986 the management asked for appointment in the post of permanent schedular for appointment in the post of permanent schedular as at that time the management was in need of permanent schedular. Accordingly the concerned workman appeared in the written test and interview and he was selected by the management for the post of Schedular and to that effect issued a letter dt. 2-4-86. The concerned workman admitted that in the said letter it was mentioned that his service as Schedular will be required only on leave/sick vacancy but inspite of so actually he worked there as Schedular from June, 1986 till 1993 when under the direction of the management he was stopped from doing his duties as Schedular. It has been submitted by the concerned workman that as Schedular he worked for more than 240 days in a year. It has been further alleged by the concerned workman that inspite of permanent vacancy the management did not regularise his service in the said post. He submitted that two schedulars namely **Indra Bahadur** and **J. P. Singh** during that period were removed from service by the management and they remained out of employment for more than 1-1/2 year. Though permanent vacancies were created the management did not consider necessary to regularise his service as Schedular. As a result he submitted several representations before the management for regularisation of his service as Schedular but the management did not pay any heed to his representation. On the contrary he was directed to work as **Machanist**. The concerned workman alleged that such decision of the management was arbitrary, illegal and in violation of the principles of natural justice and for which he raised this industrial dispute to redress his grievance. Accordingly the concerned workman has prayed for passing necessary Award directing the management to regularise his service as Schedular with effect from 1986 in the grade of Schedular with all arrears of wages and consequential benefits.

3. The management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegation which the concerned workman asserted in his W.S. It has been disclosed by the management that the concerned workman was appointed as **Trainee Machinist** on 1-6-66 and subsequently was designated

as Machinist with effect from 9-2-67 and was placed in Cat. V and later on he was promoted in Cat. VI with effect from 21-8-80. The management admitted that they gave chances to the concerned workman and Shri D. M. Jha, Machinists to work as Scheduler during leave and sick vacancies of permanent workman. In the said workshop under the management sanctioned strength of Scheduler was 4 and that of Planner was 2. At that time 4 persons were already working on permanent basis in the post of Scheduler and 2 persons were working on permanent basis in the post planners. Later on both posts of Schedulers and Planners were merged together and all work described as Scheduler-cum-Planner. The management submitted that they selected the concerned workman and D. M. Jha to work as Scheduler during leave and sick vacancies and accordingly they were given the job as and when the same could be available during the period from 1986 to 1989 and against work as Scheduler they were duly paid. The management submitted further that after merger of Scheduler and Planner and after rationalisation of work the requirement of filling up temporary vacant post of Scheduler-cum-Planner during leave and sick vacancy did not arise. The concerned workman was not required to be engaged from November, 1989 till date on the job of Scheduler during leave and sick vacancy. The management submitted that in the meantime the concerned workman was regularised as Sr. Machinist in Technical and Supervisory Grade-C with effect from 5-10-88 and he continued his job in the said post. The management further submitted that during the said period 2 Schedulers namely Indra Bahadur and J. P. Singh were removed from their service for the misconduct committed by them but later they were reinstated as the dispute was raised by the sponsoring union. Accordingly there was no such permanent vacancy in the department as Scheduler and for which there was no scope on the part of the management to regularise the services of the concerned workman as Scheduler. The management submitted that the dispute raised by the concerned workman is vexatious one and find no basis and for which the management has prayed for passing necessary Award holding that the concerned workman is not entitled to get any relief.

4. The points for decision in this reference are :—

“Whether the action of the management of Central Workshop Jamadoba of M/s. TISCO. Ltd., in not giving proper designation and grade to Shri S. K. Banerjee Machinist as per nature of his work as Scheduler from the date he was performing the job as Scheduler is justified? If not, to what relief the workman is entitled?”

FINDINGS WITH REASONS

5. The concerned workman in order to substantiate his claim was examined as witness while the management on their part examined also one witness. Considering the evidence of the concerned workman and also on the part of the management there is no dispute to hold that the concerned workman was a Machinist under the management. Considering their evidence and also considering the W.S.

filed by the concerned workman and the W.S. of the management I find no dispute to hold that the concerned workman along with another staff was allowed to work as Scheduler, under the management. It is the contention of the concerned workman that in spite of permanent vacancy existed the management for his rendering services continuously from 1986 to 1993 did not consider necessary to regularise his services as Scheduler. The concerned workman submitted that during the said period due to dismissal of services of Indra Bahadur and J. P. Singh, Schedulers two vacancies came into existence but in spite of his giving several representation the management did not consider necessary to regular his services. The contention of the management on the contrary is different one. The management in course of hearing submitted that though Indra Bahadur and J. P. Singh were dismissed from service subsequently they were reinstated. Moreover, they submitted that under them there were four posts of Schedulers and 2 posts of Planners and all those posts were filled up. Subsequently for the interest of smooth running of the administration the post of Planners were merged with that of the posts of Schedulers. As such the services of the concerned workman as Scheduler was not required. Accordingly he was asked to work as Machinist and subsequently his post was up-graded to Cat. VI. The management submitted that the claim of the concerned workman for his continuous job for 240 days in a year upto 1990 did not find any basis at all. Actually he was employed as a Scheduler absolutely on temporary basis in absence of the permanent Schedulers and against his work they paid his wages accordingly. The concerned workman during hearing admitted the fact of his appointment as Scheduler on temporary basis. The concerned workman during his cross-examination admitted all these facts. The concerned workman also admitted that the dismissed Schedulers were reinstated by the management. Therefore, from the evidence of the concerned workman it is crystal clear that no permanent vacancy existed when he was employed Scheduler under the management. The question of regularisation of service of the concerned workman in the post of Scheduler will crop up if there existed any permanent vacancy. Considering the evidence on record, all the relevant papers on record and also after hearing both sides I find no dispute to hold that the concerned workman was employed by the management as Scheduler, but it was absolutely on temporary basis. Question of regularisation of service on the part of the management did not crop up as there was no vacancy at all. Actually there was scope to regularise the services of the concerned workman against vacancy of two dismissed Schedulers but that could not be done so as the said Schedulers were reinstated in the service. The concerned workman during his cross-examination admitted that he has already taken voluntary retirement and he is no more in service. He further admitted that he received all his dues. Therefore if the prayer of the concerned workman is considered in that case there is no scope of his regularisation of service. Therefore, after careful consideration of all the facts and circumstances, I hold that the management did not commit any illegality ignoring the claim of the concerned workman in the matter of regularising his services as Scheduler. I hold that by doing so the management did not commit any illegality and

violate the principles of natural justice. The industrial dispute raised by the concerned workman, I hold finds no footing and for which the concerned workman, is not entitled to get any relief which he has prayed for. In the result, the following Award is rendered:

“The action of the management of Central Workshop Jamadoba of M/s. TISCO. Ltd., in not giving proper designation and grade to Shri S. K. Banerjee, Machinist as per nature of his work as Scheduler from the date he was performing the job as Scheduler is justified. Consequently, the concerned workman is not entitled to any relief.”

B. BISWAS, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का.अ. 2200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.ए. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पचाट को प्रभावित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[नं. एन 20012/227/93-आई आर (सी-I)]

एन पी केशवन, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 30-7-2001.

[No. L-20012/227/93-IR(C-I)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 72 of 1995

PARTIES :

Employers in relation to the management of Bhatdih Colliery of M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the workmen Shri D. Mukherjee, Secretary, B.C.K.U.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Jharkhand : INDUSTRY : Coal.

Dated, Dhanbad, the 17th July, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(227)/93-I.R. (Coal-I) dated, the 20th April, 1995.

SCHEDULE

“Whether the demand of the union raised on 3-4-91 for reinstatement with back wages of Shri Bishnu Mahto and 21 others (as per list enclosed) whose services were alleged to have been terminated in 1974 by the management of Mahuda Area of BCCL is justified? If so, to what benefit these workmen are entitled and from which date?”

2. In this reference both the parties appeared before this Tribunal and filed their respective W.S. Subsequently when the reference was fixed for filing documents by the parties learned representative for the workmen submitted that the concerned workmen have failed to keep any contact with him and accordingly he prays to pass a ‘No dispute’ Award in this reference. It appears from the records that in spite of issuance of Registered notices the concerned workmen have failed to turn up before this Tribunal. As such there is ample reason to consider that the concerned workmen are not interested with the instant reference. Under such circumstances, a ‘No dispute’ Award is rendered and the reference is disposed of on the basis of ‘No dispute’ Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

LIST OF WORKMEN

1. Bishu Mahata
2. Ramhari Mahto
3. Khalip Mahto
4. Saran Rai
5. Babulal Mahto
6. B. Maghu Mahto
7. Aavedhi Ansari
8. Majhu Das
9. Mukund Das
10. Hariram Rewani
11. Dhuma Rewani
12. Guhiram Mahto
13. Bijoy Rewani
14. Ashu Rewani
15. Ramu Mahto
16. Madan Mahto

17. Kartik Mahto
18. Ch. Meghu Mahto
19. Arjun Mahto
20. Dhanneshwar Mahato
21. Kalachand Teli
22. Lakhan Mahato.

B BISWAS, Presiding Officer

नई दिल्ली, 31 जुलाई 2001

का.अ. 2201—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अन्वये में, केन्द्रीय सरकार बी सी सी.एल. के प्रबंधकों के द्वारा नियोजन और उनके कर्मचारियों के बीच, अन्वये में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम नं. 2, धारा 17 के तहत को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[नं. एल-20012/416/94-आई आर (सी-1)]
एन पी. केशवान, डेस्क ऑफिसर

New Delhi, the 31st July, 2001

S.O. 2201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 30-7-2001.

[No. L-20012/416/94-IR(C-1)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 126 of 1995

PARTIES :

Employers in relation to the management of Lodna Area of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : Shri S. Bose, Treasurer, R.C.M.S. Union.

On behalf of the employers : Shri H. Nath, Advocate.

STATE : Jharkhand.

INDUSTRY : Coal

Dated, Dhanbad, the 20th July, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/416, 94 IR. (Coal-I), dated, the 10th October, 1995 :

SCHEDULE

"Whether the action of the management of North Tisra Colliery of M/s. BCCL in dismissing Shri Ganesh Mahato, Driver is justified? If not, to what relief Shri Ganesh Mahato is entitled?"

2. The case of the concerned workman as per W.S. in brief is as follows :—

The concerned workman in his W.S. submitted that he was permanent employee of the management and employed in the capacity of Driver. He submitted that on 25-11-91 the management issued a chargesheet against him and also suspended him from duty on the same date. Against the said Charge-sheet he submitted his explanation denying all the charges brought against him. He submitted further that being dissatisfied with the explanation given by him the management held a perfunctory departmental enquiry, violating the principles of natural justice and found him guilty and on the basis of the report of the enquiry officer the management dismissed him from service by letter dt. 24-2-92. The concerned workman submitted that the management did not supply copy of the enquiry report purported to have been submitted by the Enquiry Officer to the higher authority on the basis of which the dismissal letter issued. It has been further submitted that Dy. CME, North Tisra Colliery was not competent authority either to issue charge-sheet in accordance with the Certified Standing Order applicable to the concerned workman or to dismiss him from his service. Accordingly he submitted that the order of dismissal passed by the management is arbitrary, illegal and for which the same is liable to be set aside. Accordingly he submitted his prayer for passing necessary Award for his reinstatement to his original job with full back wages and other allowances with effect from 25-11-91 and any other relief as may deem fit and proper.

3. The management on the contrary after filing W.S.-cum-reply have denied all the claims and allegations which the concerned workman asserted in his W.S. It has been disclosed by the management that the concerned workman was a driver and posted at North Tisra Colliery under Lodna Area of M/s. BCCL. On 24-11-91 in the B shift at about 9.15 P.M. CISF personnel were on patrolling duty and during such duty hours they found Dumper No. 4898 was standing outside its area of operation and a man was drawing diesel in a container from the said dumper. At that relevant time the said Shri Ganesh Mahato, the concerned workman was on duty as Driver on the said Dumper. Accordingly the concerned workman was issued with a charge-sheet for his involvement in theft of Diesel from the said Dumper. He was charged under Sections 26.1.2, 26.1.11 and 26.1.15 of the Certified Standing Orders applicable to the employee of North Tisra Colliery. Since his reply was

not satisfactory Shri D. N. Rai, Senior Personnel Officer was appointed as Enquiry Officer. During enquiry the concerned workman not only participated but also was given full opportunity to cross-examine the witness. After completing enquiry the Enquiry Officer submitted his report finding the concerned workman guilty of the charges. As the charge brought against him were proved beyond all reasonable doubt and as the misconduct of the concerned workman was very grave in nature, the management took a decision for his dismissal and vide letter No. BCCL/NTC/92/PER/1672-535, dated 24th February, 1992 the concerned workman was dismissed from service. It has been submitted by the management that in dismissing the services of the concerned workman no arbitrary decision was taken and there was no illegality in the same. As the offence committed by the concerned workman was very serious in nature he deserved the same punishment and for which the management submitted their prayer to pass Award to the effect that the order of dismissal of the concerned workman Ganesh Mahato was justified and for which the concerned workman is not entitled to any relief.

4. The points for consideration in this reference are :—

"Whether the action of the management of North Tisra Colliery of M/s. BCCL in dismissing Shri Ganesh Mahato, Driver is justified? If not, to what relief Shri Ganesh Mahato is entitled?"

DECISIONS WITH REASONS

5. Before taking up final hearing of the instant reference, on preliminary point the case was heard and in course of preliminary hearing the management produced certain documents i.e. the enquiry papers which are marked as Exts. M-1 to M-16. In course of preliminary hearing the concerned workman conceded to the fairness and propriety relating to the domestic enquiry held against the concerned workman. Accordingly it was held by this Court that the enquiry conducted by the Enquiry Officer against the concerned workman was fair, proper and in accordance with the principles of natural justice vide its Order No. 24 dated 4-6-98.

6. As such no further evidence was adduced either by the management or the concerned workman at the time of final hearing. It is admitted fact that the concerned workman was a Driver under the management. It is the specific allegation of the management that on 24-11-91 the concerned workman was in B shift duty and at about 9.15 P.M. CISF personnel while on patrolling duty found the concerned workman to take out diesel from the Dumper No. 4898 while it was standing outside its area of operation. Accordingly the management not only suspended him from his service but also issued charge-sheet against him. On the basis of that Charge-sheet the concerned workman gave reply but as the reply was not satisfactory the management appointed Shri D. N. Rai, Sr. P.O. as enquiry officer to hold domestic enquiry against the concerned workman. The concerned workman during the said domestic enquiry participated and in spite of giving full opportunity he declined to cross-examine the witnesses. I have considered the relevant papers

of domestic enquiry and it transpires that the Enquiry Officer during domestic enquiry examined some witnesses namely P. K. Singh, Dy. P.M., H. N. Sharma, Senior Executive Engineer, Kanwar Prasad, CISF Constable, Budhu Mallah and the concerned workman. From the statements of P. K. Singh, Dy. P.M. it transpires that on that relevant date i.e. on 24-11-91 Budhu Mallah and the concerned workman were on B shift duty. In course of their duty Budhu Mallah drove the Dumper upto 6.45 P.M. It has been further disclosed that while Budhu Mallah driving the said Dumper Bearing No. 4898 came to E.K.G. Shovel it created some Mechanical defect. As a result he garraged the Dumper there and thereafter he did not drive the same. Thereafter the concerned workman took charge of the said Dumper and took out the same from the Project place. Thereafter the said Dumper was seen lying there in the same place. It further transpires from the statement of P. K. Singh that the said Dumper was loaded with 300 litres of diesel out of which 35 litres of diesel was consumed while the Dumper was driving Budhu Mallah upto 6.45 P.M. It was found that 45 litres of diesel was found in the tanker of the dumper and the remaining part of the diesel was stolen out. Shri H. N. Sharma, Sr. Executive Engineer during giving his statement corroborated the fact. Kanwar Prasad, CISF constable during his evidence disclosed that on 24-11-91 during his patrolling duty at about 9.15 P.M. he found one Dumper standing in doubtful condition outside the Project Area. Being curious when he came there, he found some/suspicious persons near the said Dumper. On seeing him those persons fled away but he found one person to take out diesel from the tank of the dumper with help of pipe. He then apprehended him and took him to his Sr. Officer where that person was identified himself as Ganesh Mahato i.e. the concerned workman. Opportunity was given to both Budhu Mallah and the concerned workman Ganesh Mahato to cross-examine the witnesses but the concerned workman and Budhu Mallah refused to cross-examine him. Budhu Mallah during his evidence disclosed that on 24-11-91 he was on B shift duty to drive Dumper No. 4898. At about 6.45 P.M. driving the said Dumper he came to E.K.G. Shovel Bajrang. He disclosed that when he came to that place the said Dumper became out of order due to some mechanical problem and for which garraging the said dumper there he went to the tea stall for taking tea. Thereafter when he returned back to that place he was reported by the Overman incharge to the effect that the concerned workman had taken away the said Dumper. The concerned workman Ganesh Mahato on the contrary though admitted the fact of driving the said dumper on that day denied the charge which was brought against him. He disclosed categorically that he was innocent and in spite of his innocence he was dismissed from his service with false charge.

7. Considering the statement of witnesses recorded by the Enquiry Officer and also considering the relevant papers I find no dispute to hold that on 24-11-91 during B shift duty Budhu Mallah and the concerned workmen were in charge of Dumper in question. The said dumper was loaded with 300 litres of diesel for the purpose of its operation on that day. Both Budhu Mallah and the concerned workman were charge-sheeted. It is further seen from the statement of Budhu

Mallah that he drove the said Dumper upto 6.45 P.M. on 24-11-91. The said dumper became out of order due to mechanical defect when he came to E.K.G. Shovel Bajrang and as a result of which he left the said dumper and taking permission of his superior went to the tea stall for taking tea. Thereafter when he returned back, from the Overman he came to know that the said Dumper was taken away by the concerned workman Ganesh Mahato. The concerned workman during his statement did not deny the fact of remaining charge of the said Dumper by himself and Budhu Mallah. Admitting this fact he submitted that he left the said dumper prior to that incident and for which he was not aware what happened thereafter. The statement of Kanwar Prasad shall be taken into consideration with all important. Kanwar Prasad during his evidence disclosed categorically that at about 9.15 P.M. at night while he was patrolling duty he found the said dumper standing beyond the Project Area by the side of the road in suspicious condition. Thereafter he came to that place and found some person there. When he tried to apprehend them some persons fled away but he apprehended the concerned workman while he was engaged in taking out diesel from the oil tank of that dumper through pipe. Thereafter he was taken to his Senior Officer. It is clearly seen from the statement of this witness that the concerned workman was caught red handed while he was engaged in stealing diesel from the said Dumper. No evidence is forthcoming before this Tribunal rebutting the statement of this witness. The statement of this witness was recorded in presence of the concerned workman and opportunity was given to him to cross-examine the witnesses. But he refused to cross-examine the witnesses. Naturally the statements given by these witnesses remained unchallenged. There is no dispute to hold that the concerned workman was in charge of the Dumper during his shift duty on 24-11-91. Therefore, he cannot avoid his responsibility to explain his presence while he was caught red handed by this witness Kanwar Prasad. As no satisfactory explanation was given on the part of the concerned workman during enquiry the Enquiry Officer after considering the statement of other witnesses found him guilty and forwarded the entire enquiry matters to the disciplinary authority. The disciplinary authority after perusing all papers relating to the domestic enquiry found him guilty of misconduct and considering seriousness of the offence committed by the concerned workman he was dismissed from his service. Charge against the concerned workman was framed under clauses 26.1.2, 26.1.11 and 26.1.15 of the Certified Standing Order. I have carefully considered all documents and I hold that finding of the Enquiry Officer stands on cogent footing.

8. In course of hearing learned Advocate for the concerned workman submitted referring that copy of the enquiry report was not supplied to the concerned workman and for which order of dismissal passed by the disciplinary authority was illegal and accordingly it is not sustainable in the eye of law. Learned Advocate further agitated that Dy. C.M.E. was not competent enough to pass the order of dismissal as per provision of Certified Standing Order. I have carefully considered all aspects and I hold that Dy. C.M.E. was competent enough to issue order of dismissal. Now the point for consideration is whether the order of

dismissal passed by the management without supplying a copy of the domestic enquiry report has vitiated the order of dismissal. Learned Advocate for the concerned workman in support of the claim referred to a decision reported in 1 CLR SC. 61. Referring the said decision learned Advocate for the concerned workman submitted that supply of copy of domestic enquiry is must to concerned workman before taking up any final decision by the disciplinary authority. As the disciplinary authority did not hand over any copy of the Enquiry Report the concerned workman did not get any opportunity to make his further submission in order to establish his innocence and accordingly the order of dismissal passed by the disciplinary authority is to be considered illegal and arbitrary and the same is, therefore, liable to be set aside. On the contrary learned Advocate for the management submitted that the submission of the learned Advocate for the concerned workman finds no basis in view of the decisions referred to by him. I have carefully considered the decision referred to above. In para 8 of the said decision Their Lordships of the Apex Court observed :—

“When the disciplinary authority himself inquires into the charges there is no occasion for submission of an inquiry report. The entire evidence—oral and documentary—along with submissions, if any are available to him to proceed to arrive at final conclusions in the inquiry. Where, however the disciplinary authority delegates the inquiry to another, such Inquiry Officer may furnish a report on the basis of the evidence recorded by him and in some cases the Inquiry Officer even recommends the punishment to be imposed.

In cases where the Inquiry Officer merely transmits the records of inquiry proceedings to the disciplinary authority there is indeed no distinction to be drawn between the inquiry conducted by the disciplinary authority himself or the inquiry officer. This is so on account of the fact that there is no further material added to the record at the time of transmission to the disciplinary authority.”

However, in para 18 of the said decision Their Lordships of the Apex Court clearly observed the following :—

“We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the Inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

Therefore, considering the decision referred to above and also considering the observation made by Hon'ble Apex Court it is clear that supply of copy of domestic enquiry to the concerned workman is mandatory with view to give opportunity to submit his representation further. If the concerned workman is debarred

from getting any such opportunity it should be considered in such circumstances that he was deprived of making his representation and as a result of which it will amount to violation of natural justice. In course of hearing Learned Advocate for the management has failed to satisfy this Tribunal if any copy of the enquiry report was handed over to the concerned workman by the management before passing any final order. It is the specific contention of the concerned workman that no such copy of enquiry was handed over to him with a view to give him an opportunity to submit representation before the management to prove his innocence. As such after careful consideration of all the facts and circumstances, I hold that the order of dismissal passed by the disciplinary authority has been vitiated as it violated the principles of natural justice in view of my discussion above. In the result, the disciplinary action taken by the management against the concerned workman is liable to be set aside. In the result, the following Award is rendered :—

“The action of the management of North Tisra Colliery of M/s. BCCL in dismissing Shri Ganesh Mahato, Driver is not justified. Consequently the concerned workman is entitled to reinstatement but without any back wages. However, he is entitled to continuity of service.”

The management is therefore directed to implement the Award as directed above within three months from the date of its publication in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

का.प्र. 2202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 29 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/435/94-आई आर (सी-I)]
एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2202.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 30-7-2001.

[No. L-20012/435/94-IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 143 of 1995

PARTIES :

Employers in relation to the management
of Lodna Colliery of M/s. BCCL.

AND

Their Workman

APPEARANCES :

On behalf of the employers.—Shri H.
Nath, Advocate.

On behalf of the workman.—None.

STATE : Jharkhand. INDUSTRY : Coal.
Dated, Dhanbad, the 16th July, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/435/94-I.R. (Coal-I), dated, the 18th October, 1995.

SCHEDULE

“Whether the Union is justified in demanding restoration of Cat. V for Shri Kailash Sharma, Crusher Khalasi on the basis of Service Link Upgradation benefits? If so, to what relief is the workman entitled and from which date?”

2. In this reference both the parties appeared and filed their respective W.S. documents etc. Subsequently the workman side abstained from taking any steps further in this reference. The reference is pending since 1995 and it is of no use to drag the same any more. Under such circumstances a ‘No dispute’ Award is rendered and the reference is disposed of on the basis of ‘No dispute’ Award presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 31 जुलाई, 2001

SCHEDULE

का.आ. 2203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अधुसूचन से, केन्द्रीय सरकार इसको के प्रबंधाल के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, सं 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[नं. एन-20012/441/94-प्र.ई.आर (सी-1)]

एन.पी. केशवन्, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of IISCO and their workman, which was received by the Central Government on 30-7-2001.

[No. L-20012/441/94-IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

Reference No. 147 of 1995

PARTIES :

Employers in relation to the management of Chasnalla Colliery of M/s. IISCO, Ltd. and their workman.

APPEARANCES :

On behalf of the Workman.—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the Employers.—Shri B. Joshi, Advocate.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 18th July, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/441/94-I.R. (Coal-I), dated, the 18th October, 1995.

2497 GI/2001—22

“Whether the action of the management of Chasnalla Washery of M/s. IISCO Ltd. in terminating the services of Shri Dhiraj Kumar Sharma, S/o Smt. Sova Devi w.e.f. 1-6-92 is justified? If not, to what relief Shri Dhiraj Kumar Sharma is entitled and from which date?”

2. The case of the concerned workman in brief as per W.S. is as follows :—

The concerned workman submitted that his father Ram Awatar Sharma was a permanent workman under the management at Chasnalla Colliery. His father died during the course of his employment at Chasnalla Colliery. As a result his mother Sova Devi was provided with employment by the management as permanent workman. Thereafter the concerned workman submitted that the management insisted Smt. Sova Devi to offer her employment to her dependent son and accordingly his mother submitted her voluntary resignation from employment for providing him in service under the management. The management thereafter by order dated 24-2-92 provided employment to him as Cat. I Mazdoor. The workman submitted that he was appointed against permanent post and against permanent vacancy as permanent workman. In spite of the aforesaid fact the management by letter dated 1-6-92 terminated him from his service on the alleged ground of non-performance of duty to the satisfaction of the management during the alleged probationary period. It has been alleged that the management terminated him from his service without issuance any charge-sheet and conducting any enquiry and also without giving him any opportunity to make his submission. Accordingly the concerned workman alleged that such termination order was not only illegal, arbitrary but also it has gone against the principles of natural justice. Accordingly the concerned workman raised industrial dispute which resulted to this reference. The concerned workman accordingly prayed for passing an Award directing the management to reinstate him in service with full back wages.

3 The management on the contrary after filing W.S.-cum-rejoinder has denied all the allegations and claims which the concerned workman asserted in his W.S. It has been submitted by the management that the concerned workman was appointed as daily rated worker by letter dated 24-2-92 to carry on misc. job as General Mazdoor and was not appointed as probationer against permanent post. It has been further submitted that his performance was not found satisfactory and during his initial employment for a period of 3 months he could not be found suitable for his continuance even as daily rated worker. As he was not suitable for performing his duties even as daily rated his service was terminated with effect from 1-6-92. The management further submitted that they are very much entitled to terminate the services of a daily rated casual worker without any notice or reason whatsoever if his performance becomes unsuitable. The management further submitted that they took decision relating to the suitability and efficiency of the concerned workman within a period of 3 months of his employment as daily rated worker

and terminated his service as he was not found suitable for continuance in his employment in a colliery. Accordingly the management submitted their prayer for passing necessary award holding that the concerned workman is not entitled to any relief.

4. The points for decision in this reference are :—

“Whether the action of the management of Chasnalla Washery of M/s. IISCO, Ltd. in terminating the services of Shri Dhiraj Kumar Sharma S/o Smt. Sova Devi w.e.f. 1-6-92 is justified? If not, to what relief Shri Dhiraj Kumar Sharma is entitled and from which date?”

Decision with Reasons

5. The management in order to substantiate their claim has examined one witness while the concerned workman examined himself as witness in support of his claim which he agitated in his W.S. In course of evidence the management has filed extract of the attendance register of the concerned workman marked as Ext. M-1 while in course of evidence of the concerned workman appointment letter and termination order were marked as Ext. W-1 and W-2. Considering the evidence of the management and the workman there is no dispute to hold that Ram Awtar Sharma who was the father of the concerned workman was an employee of Chasnalla Colliery. It is also admitted fact that due to massive accident in the said colliery in the year 1975 the said Ram Awtar Sharma died while he was on duty and as a result, his widow was provided with a job. It has been disclosed by the concerned workman that as his mother fell seriously ill, she took voluntary retirement from service and in her place he was employed by the management on 20-4-92 on permanent post but he was terminated from the service on 1-6-92. It is the specific allegation of the management that performance of the concerned workman as daily rated worker was absolutely far from satisfactory and he was found unsuitable for the said job for which the management terminated him from his service without any notice. It is the contention of the concerned workman that he was appointed by the management against permanent post and against permanent vacancy as permanent workman. As such before terminating his service the management was liable to issue chargesheet and also to take up domestic enquiry but without issuing any chargesheet and also without conducting any domestic enquiry and also without giving any opportunity to him he was terminated from his service which was not only arbitrary, illegal but also against the principles of natural justice. The appointment letter during evidence of the concerned workman was marked as Ext. W-1. From the appointment letter it transpires that the concerned workman was offered with employment of Mazdoor in daily rated Cat.-I subject to the condition that he would be posted in C.P.P. Chasnalla after initial training as per rules. According to the concerned workman he joined to his service on 20-4-92 which has duly been denied by the management in course of hearing. From the extracts of the attendance register it transpires that he joined in the service under the management on 21-2-92 and he was discharged from service on 1-6-92. From the attendance extract it transpires that from 23-3-92 till 30-6-92 he remained absent

from duty. MW-1 during his evidence categorically disclosed that the concerned workman was habitual absentee from his duty. Relying on the evidence of MW1 and also considering the fact disclosed in the W.S.-cum-rejoinder and also on the relevant papers, learned Advocate for the management submitted that the concerned workman was found unsuitable as he was not at all eager to work. In support of the claim learned Advocate for the management relied on the extracts of attendance register. Learned Advocate for the concerned workman on the contrary submitted that the concerned workman was appointed against permanent post and against permanent vacancy and for which in case of his termination certified standing order shall be applicable. Learned Advocate further submitted that before terminating the services of the concerned workman neither chargesheet was given to him nor any domestic enquiry was held against him even he was not given opportunity of making his submission before the management. As such termination order issued by the management marked as Ext. W-2 is not sustainable in the eye of law. Learned Advocate for the management on the contrary submitted that before his posting the concerned workman was placed under initial training as per rules and during this training period the concerned workman was found not suitable and inefficient and for which the management terminated him from service and in such case there is no scope to follow the principles as laid down in the Standing Order. It is a fact that the learned Advocate for the concerned workman in course of hearing has failed to establish that the concerned workman was appointed against permanent post and against permanent vacancy. As such point for consideration here is if the management is competent enough to terminate the service of the concerned workman without issuing any chargesheet and also taking up any domestic enquiry against him following the Certified Standing Order. In support of claims and counter claims learned Advocate on both sides relied on certain decisions. I have considered the decisions referred to by the learned Advocate Advocate for the concerned workman reported in L.L.J.(2) 1956 439 Supreme Court, L.L.J. Vol. 12 1961 page 107 Supreme Court, LLR 2001 (SC) page 560, SCLJ Vol. 5 page 2968. On the contrary, learned Advocate for the management relied on the decisions reported in 1999 Lab. I.C. page 2628 and 1998 Lab. I.C. 420. I have considered all the decisions referred to by the learned Advocate for the concerned workman. In the decision reported in 2001 LLR 560 Their Lordships held that “The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simpliciter without casting any stigma may not be interfered with by Court. But the Court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the Court comes to a conclusion that the order was, in fact, the motive then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be

held to be penal in nature and must be interfered with since the appropriate procedure has not been followed." In the decision reported in SCLJ Vol. 5 page 2983. Their Lordships of the Apex Court held that "The Industrial Tribunal is competent enough to enquire whether the termination order has been effected bonafide." Their Lordships in the said decision held that "Assuming in favour of the management that the respondent was appointed on probation for a period of 6 months and it was stipulated in the contract that during the probationary period the services of the respondent could be terminated without notice and without assigning any reason. In other words, the management had the contractual right to terminate the services of the respondent without assigning any reason therefor. But if the validity of the termination is challenged in an industrial adjudication, it would be competent to the industrial Tribunal to enquire whether the order of termination has been effected in the bonafide exercise of its power conferred by the contract. If the discharge of the employee has been ordered by the management in bonafide exercise of its power, the Industrial Tribunal will not interfere with it, but it is open to the Industrial Tribunal to consider whether the order of termination is malafide or whether it amounts to victimisation of the employee or an unfair labour practice or is so capricious or unreasonable as would lead to the interference that it has been passed for ulterior motives and not in bonafide exercise of the power arising out of the contract. In such a case it is open to the Industrial Tribunal to interfere with the order of the management and to afford proper relief to the employee." I have considered the decisions referred to above. From the decisions I do not find anything relying on which it can be said that that application of Certified Standing Order in the matter of termination of a daily rated worker who was placed in the training is required. Considering the decisions of the Hon'ble Apex Court there is scope to say that temporary/probationer employee can be terminated by the management if he is found inefficient and if that order of termination appears to be bonafide. Learned Advocate for the management on the contrary relying on the decision reported in 1998 Lab. I.C. page 420 and 1999 Lab. I.C. page 2628 submitted that the management did not commit any wrong to terminate the services of the concerned workman during his training period as he was found unsuitable and inefficient. Therefore, the moot question which has to be considered here is whether the termination order passed by the management was bonafide in nature. It is seen that initially the father of the concerned workman was an employee under the management. Due to Chasnalla disaster the father of the concerned workman died. As a result widow of the victim was provided with employment under the management but as the said widow fell ill seriously she took voluntary retirement and in her place the management provided employment to the concerned workman. Therefore, it is seen that the management from the very initially showed their gesture to provide employment to the concerned workman absolutely on compassionate ground. Naturally the concerned workman cannot avoid responsibility to show his efficiency during his tenure of service. From the appointment letter it has been exposed clearly that he was appointed as a daily rated

worker and he would be posted temporarily in C.P.P. at Chasnalla colliery after his initial training as per rules. It is seen from the extracts of attendance register that the concerned workman joined his service on 25-2-92 and he was terminated from his service on 1-6-92. During this period the employee remained himself absent continuously for 2 months. The concerned workman has failed to assign any reason of his long absence. No cogent paper is forthcoming before this Court that he duly intimated in the matter of his long absence. Considering the appointment letter there is scope to say that the concerned workman was under training during the said period. It is seen that the concerned workman did not consider necessary to complete his training during the period. On the contrary he remained himself absent for a long period. It is the specific allegation of the management that the concerned workman was found unsuitable and inefficient during the period of his training and for which he was terminated. If the extracts of the attendance register and all other aspects are taken into consideration there is scope to say that the management is entitled to judge the performance of the concerned workman during the initial period of his appointment. It is seen that the concerned workman has failed to satisfy the management about his performance of work as daily rated worker. Accordingly, there is no reason to believe that the performance of the concerned workman became very satisfactory and suitable to the management. After careful consideration of all the facts and circumstances it is seen that the decision to terminate the services of the concerned workman on the part of the management was absolutely bonafide in absence of any cogent proof to the effect that such termination order was a malafide one and it was so done by the management with ill intention. Accordingly there is no scope to hold that the order of termination passed by the management was illegal and arbitrary and against the principles of natural justice. Under the circumstances the concerned workman is not entitled to get any relief. In the result, the following Award is rendered :—

"The action of the management of Chasnalla Washery of M/s. IISCO, Ltd. in terminating the services of Shri Dhiraj Kumar Sharma, S/o. Smt. Sova Devi w.e.f. 1-6-92 is justified. Consequently, the concerned workman is not entitled to any relief."

B. BISWAS, Presiding Officer.

नई दिल्ली, 31 जुलाई, 2001

का.आ. 2204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं. एन-20012/463/93-आई आर (सी-I)]

एन.पी. केशवन्, बैस्क अधिकारी

New Delhi, the 31st July, 2001

नई दिल्ली, 31 जुलाई, 2001

S.O. 2204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of IISCO and their workman, which was received by the Central Government on 30-7-2001.

[No. L-20012/463/93-IR(C-1)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 14 of 1995

PARTIES :

Employers in relation to the management of Jitpur
Colliery of M/s. IISCO. and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : None.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 16th July, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(463)/93-I.R.(Coal-1), dated, the 8th February, 1995 :

SCHEDULE

"Whether the action of the management of Noonodih Jitpur Colliery of M/s. IISCO. Ltd. in not allowing the resumption of duties by Bharat Prasad Choubey is justified? If not, to what relief he is entitled?"

2. In this reference both the parties appeared at first before this Tribunal and filed their respective W.S. Subsequently at the stage of filing documents both the parties abstained from appearing before this Tribunal and taking any steps in this reference although registered notices were issued to them. The reference is pending since 1995 and it is of no use to drag the same for years after year. Under such circumstances, a 'No Dispute' Award is rendered and the reference is disposed of on the basis of the 'No Dispute' Award on the presumption of non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

ता.आ. 2205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबंध निोजकों और उनके कार्यकारों के बीच, झुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2001 को प्राप्त हुआ था।

[सं एल-24012/137/85-डी. IV(बी)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 31st July, 2001

S.O. 2205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bhowra Area No. XI and their workman, which was received by the Central Government on 31st July, 2001.

[No. L-24012/137/85-D.IV(B)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 186 of 1986

PARTIES :

Employers in relation to the management of
Bhowra (South) Colliery of Bhowra Area
No. XI and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : Shri H. Nath,
Advocate.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 16th July, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(137)/85-D.IV(B) dated, the 19th May, 1986.

SCHEDULE

DECISIONS WITH REASONS

“Whether the action of the management of Bhowra (South) Colliery of Bhowra Area No. XI of M/s. B.C.C.L., P.O. Bhowra, Distt. Dhanbad in not regularising Sri Panchanan Mishra, Cat. I Mazdoor as Statistical Clerk is justified? If not, to what relief the workman is entitled?”

2. The case of the concerned workman as per his W.S. in brief is as follows :—

The concerned workman in his W.S. submitted that since July, 1984 he has been continuously working as Statistical Assistant against permanent vacancy. He submitted that as per Wage Board Recommendation and JBCCI decision the concerned workman is entitled for regularisation as Statistical Assistant in Clerical Grade-I after completion of 240 days as Statistical Assistant. It has been submitted that in spite of repeated representation made by him the management did not consider to appoint him as Statistical Assistant. Accordingly the concerned workman raised an industrial dispute before the ALC(C), Dhanbad which ultimately resulted reference to this Tribunal. The concerned workman accordingly prayed for passing necessary order directing the management to regularise him as statistical assistant in Clerical Grade-I with retrospective effect and also with consequential benefits and arrears of wages.

3. The management on the contrary after filing W.S.-cum-rejoinder has denied all the allegation which the concerned workman asserted in his W.S. It has been submitted by the management that the concerned workman was previously employed in Tisra Colliery of BCCL in Cat. I Mazdoor. In July, 1984 the concerned workman was transferred to Bhowra (South) Colliery in the said capacity and discharged his duties there as Mazdoor. The management submitted that all along the concerned workman discharged his duties as Cat. I Mazdoor only and he never discharged his duties as Statistical Clerk. The management further submitted that under them they did not have any post with the designation of Statistical Clerk. The management further submitted that the concerned workman had applied for the post of Dump Man/Trip Man and his prayer was considered in the year 1986 by the selection committee and as he was found fit for the said post, he was posted in Block II Area as Dump Man/Trip Man and he worked in the same post. It has been submitted by the management that without any cogent ground the concerned workman has raised this dispute illegally and arbitrarily. Accordingly the management has prayed for passing Award rejecting the claim of the concerned workman.

4. The point for decision in this reference is :—

“Whether the action of the management of Bhowra (South) Colliery of Bhowra Area No. XI of M/s. B.C.C.L., P.O. Bhowra, District Dhanbad in not regularising Sh. Panchanan Mishra, Cat. I Mazdoor as Statistical Clerk is justified? If not, to what relief the workman is entitled?”

5. The concerned workman in course of hearing was examined as witness in the instant case. The management also examined one witness on their behalf. During evidence the concerned workman submitted that on 3-2-82 he was appointed as Mining Apprentice but after 3/4 months he was appointed in Clerical Section though he used to get stipend as Mining Apprentice. Since 21-7-84 he started working as Statistical Clerk and he was in the said job till December, 1986. During this period his attendance as Statistical Clerk was more than 240 days and thereafter he was switched over to Assistant Storekeeper. He submitted that as Statistical Clerk he used to maintain P.O.L. and fuel register and monthly O.B.R. and coal production register, shovel performance report and different works. He submitted that all these works are of statistical assistant. The management on the contrary submitted that there was no post of Statistical Assistant under them and for which there was no scope at all to consider the prayer of the concerned workman. They also submitted that the concerned workman never worked as Statistical Assistant under the management. On the contrary they submitted that he was a Mazdoor Cat. I and thereafter he was appointed as Dump Man/Trip Man in the year 1986 and is working in the said post. Here the point for consideration is whether there is any permanent post of Statistical Assistant under the management and whether the concerned workman was directed to work as Statistical Assistant officially. It has also to be looked into if the concerned workman for more than 240 days in a year during the period from July, 1984 to December, 1986 worked as Statistical Assistant. In course of hearing no evidence is forthcoming before the Tribunal relying on which there is scope to say that there was post of Statistical Assistant Grade-I under the management. In course of evidence some documents were produced before the Tribunal on the part of the workman and marked as Exts. W-1 to W-15. I have considered those documents from these documents there is no scope to draw any conclusion that as Statistical Assistant the concerned workman prepared those papers. MW-1 during his evidence though admitted the signature of the concerned workman in those papers submitted categorically that the same was prepared by different person and not the concerned workman. This averment was not challenged by the concerned workman during cross-examination. It is true that the concerned workman in discharge of his duties carried on same work and signed some papers. But in no circumstances it established that the concerned workman worked as Statistical Assistant under the management particularly when from the evidence of the management it has been explained clearly that there is no such post lying under them. Onus absolutely lies on the concerned workman to justify that he worked for more than 240 days as a Statistical Assistant. In course of hearing I have failed to find out an iota of evidence in support of this claim. As such this claim for working as Statistical Assistant for more than 240 days by the concerned workman finds no basis at all. As such after careful consideration of all the facts and circumstances I hold that the concerned workman has failed to justify his

claim beyond all reasonable doubt. In the result, the following Award is rendered :—

“The action of the management of Bhowra (South) Colliery of Bhowra Area No. II of M/s. B.C.C.L., P.O. Bhowra, Distt. Dhanbad in not regularising Shri Panchanan Mishra, Cat. I Mazdoor as Statistical Clerk is justified. Consequently the concerned workman is not entitled to any relief.”

B. BISWAS, Presiding Officer

नई दिल्ली, 6 अगस्त, 2001

का.आ. 2206.—केन्द्रीय सरकार ने यह मनावाने हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखंड (6) के उपबंधों के अन्तर्गत भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 349 दिनांक 6-2-2001 द्वारा नायकीय ईंधन और संघटक, भारी पानी और संवद्ध रसायन तथा प्राणविक ऊर्जा को उक्त अधिनियम के प्रयोजनों के लिए 26 फरवरी, 2001 से छ. मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था,

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छ. मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है,

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखंड (VI) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 26 अगस्त, 2001 से छ मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[सं एस-11017/3/97-आईआर (पी एल)]

एच.सी. गुप्ता, अवर सचिव

New Delhi, the 6th August, 2001

S.O. 2206.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 349 dated the 6-2-2001 Industrial Establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy to be a public utility service for the purpose of the said Act, for a period of six months from the 26th February, 2001.

And, whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the August, 2001.

[No. S-11017/3/97-IR(r

H. C. GUPTA, Under Secy,

नई दिल्ली, 7 अगस्त, 2001

का.आ. 2207.—केन्द्रीय सरकार का समाधान हो गया है कि लोकहित में ऐसा अपेक्षित है कि किसी भी तेल क्षेत्र में सेवाओं को जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 17 के अन्तर्गत निर्दिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवाएं घोषित किया जाना चाहिए।

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखंड (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काय प्रभाव से छ. मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[सं एल. 11017/10/97-आईआर (एल)]

एच.सी. गुप्ता, अवर सचिव

New Delhi, the 7th August, 2001

S.O. 2207 —Whereas the Central Government is satisfied that the public interest requires that the services in any Oil Fields which is covered by item 17 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility services for the purposes of the said Act ,

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/10/97-IR(PL)]

H. C GUPTA, Under Secy.

नई दिल्ली, 8 अगस्त, 2001

का.आ. 2208.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 सितम्बर, 2001 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4, अध्याय 5 और 6 [धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध

पश्चिम बंगाल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् —

“जिला हुगली में पोलबा पुलिस स्टेशन के अन्तर्गत आने वाले क्षेत्र/मौजा :—झापा, सुगंधा, ताराबिहारी, राजहाट, कामदेवपुर, महेशपुर” ।

[सं. एस-38013/17/2001-एस एस-1]
एम. सी. मिस्तल, उप सचिव

New Delhi, the 8th August, 2001

S.O. 2208.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st September, 2001 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters V and VI [except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of West Bengal, namely:—

“Areas comprising the Mouzas of Jhapa, Sugandha Tara Bhai, Rajhat, Kamdeopur, Maheshpur under Polba P.S. in the District of Hooghly.”

[No. S-38013/17/2001-SS I]

M. C. MITTAL, Dy Secy.

नई दिल्ली, 8 अगस्त, 2001

का.घा. 2209.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 सितम्बर, 2001 की उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4, अध्याय-5 और 6 धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है। के उपबन्ध पश्चिम बंगाल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे अर्थात्:—

जिला बर्दवान में हीरापुर थाना के बनेपुर क्षेत्र के अन्तर्गत आने वाले क्षेत्र :—

“जामझिहा जे. एल. नं. 1, जुनुट जे. एल. नं. 2, भालादी जे. एल. नं. 3, नामदारा जे. एल. नं. 4, चापरादी जे. एल. नं. 5, अलूलिया जे. एल. नं. 6, भरत चाक जे. एल. नं. 7, पातमोहना जे. एल. नं. 8, विद्यानंदपुर जे. एल. नं. 9, बरादीघड़ी जे. एल. नं. 10, छोटोदिघारी जे. एल. नं. 11, शानरमारा जे. एल. नं. 12, पुरुषोत्तमपुर जे. एल. नं. 13, कुइलापुर जे. एल. नं. 14, दिहीका जे. एल. नं. 15, श्यामदिही जे. एल. नं. 16, बनग्राम जे. एल. नं. 17, हीरापुर जे. एल. नं. 18, लकरासाता जे. एल. नं. 19, सांता जे. एल. नं. 20, नरसिंहबंद जे. एल. नं. 21, इस्माईल जे. एल. नं. 22, तालकुरी जे. एल. नं. 23, बाराबोल

जे. एल. नं. 24, नबघादी जे. एल. नं. 25, कालासरिया जे. एल. नं. 26, धेनुआ जे. एल. नं. 27” ।

[सं. एस-38013/18/2001-एस-एस-1]
एम. सी. मिस्तल, उप सचिव

New Delhi, the 8th August, 2001

S.O. 2209.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st September, 2001 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters V and VI [except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of West Bengal, namely—

“Areas comprising the Mouzas Jamdiha J.L. No. 1, Junut J.L. No. 2, Bhaladi J.L. No. 3, Namadara J.L. No. 4, Chapardi J.L. No. 5, Alulia J.L. No. 6, Bharat Chak J.L. No. 7, Patmohona J.L. No. 8, Bidyanandpur J.L. No. 9, Baradighari J.L. No. 10, Chotodighari J.L. No. 11, Shanrara J.L. No. 12, Purusuttampur J.L. No. 13, Kulapur J.L. No. 14, Dihika J.L. No. 15, Shyamdihi J.L. No. 16, Banagram J.L. No. 17, Hirapur J.L. No. 18, Lakrasanta J.L. No. 19, Santa J.L. No. 20, Narsinghbandh J.L. No. 21, Ismail J.L. No. 22, Talkuri J.L. No. 23, Barathol J.L. No. 24, Nabaghanadi J.L. No. 25, Kalajharia J.L. No. 26, Dhenua J.L. No. 27 of Burnpru under Hirapur Police Station in the District of Burdwan.”

[No. S-38013/18/2001-SS.I]
M. C. MITTAL, Dy. Secy.

नई दिल्ली, 8 अगस्त, 2001

का.घा. 2210.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 सितम्बर, 2001 की उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4, अध्याय-5 और 6 [धारा 76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध पश्चिम बंगाल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

जिला हुगली में सिंगुर पुलिस स्टेशन एवं मौजों के अन्तर्गत आने वाले क्षेत्र :—“गोपाल नगर, बगडांगा एवं चाइनामोड सिंगुर (1), किस्मत, कुमारकुंड, सिंगुर (2), गाजीपुर नसीबपुर, बेराबेरी” ।

[सं. एस-38013/19/2001 एस एस-1]
एम. सी. मिस्तल, उप सचिव

New Delhi, the 8th August, 2001

नई दिल्ली, 10 अगस्त, 2001

S.O. 2210.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st September, 2001 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters V and VI [except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of West Bengal, namely:—

“Areas comprising the Mouzas of Gopalnagar Bagdanga and Chainamore Singur-1, Kismat, Kamarkundu, Singur-2, Gazipur, Nasibpur and Beraberi under Singur Police Station in the District of Hooghly.”

[No. S-38013/19/2001-SS-I]

M. C. MITTAL, Dy. Secy.

का.आ.2211.—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री टी. नन्द कुमार, डेस्क अधिकारी, श्रम मंत्रालय नई दिल्ली को दिनांक 31 जुलाई, 2001 अपराह्न से उत्प्रवासी संरक्षी-II तिरुवनन्तपुरम के रूप में नियुक्त करती है।

[सं. एस-11011/1/2000-उत्प्रवासी]

एस.वी. कृष्णन, अवसर सचिव

New Delhi, the 10th August, 2001

S.O. 2211.—In exercise of the powers conferred by Section 3, Sub-section (1) of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri T. Nanda Kumar, Desk Officer, Ministry of Labour as Protector of Emigrants-II, Thiruvananthapuram with effect from 31st July, 2000 (AN).

[No. S-11011/1/2000-Emig.]

S. V. KRISHNAN, Under Secy.